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No. 56] NEW DELHI, THURSDAY, MARCH 5, 1953

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 5th March 1953

S.R.O. 453.—WHEREAS the election of Shri Dasankop Hasansab Maktumsab of Dharwar, as a member of the Legislative Assembly of Bombay from the Dharwar Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Basawaraj Ayyappa Desai of Hangarki, District Dharwar, Bombay State;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 82 OF 1952.

CORAM

Shri V. B. Raju, I.C.S.,—*Chairman.*

Shri G. N. Katre, LL.M.,

Shri S. B. Jathar, LL.B.,—*Members of the Tribunal.*

In the matter of the Representation of the People Act, 1951.

AND

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

AND

In the matter of the Election Petition presented thereunder by Shri Desai Basawaraj Ayyappa.

Desai Basawaraj Ayyappa of Hangarki residing at Dharwar Taluka and District Dharwar—*Petitioner*

Versus

1. Dasankop Hasansab Maktumsab of Dharwar, Taluka and District Dharwar,
2. Kurtakoti Shankar Lingo of Dharwar, Taluka and District Dharwar,
3. Sanganoli (Bhosale) Yeswant Laxman of Dharwar, Taluka and District Dharwar,
4. Jathar Shambhurao Wamanrao of Dharwar, Taluka and District Dharwar,

5. Shivalli Virayya Virupaxayya of Dharwar, Taluka and District Dharwar,
 6. Tikare Narayan Gopalrao of Dharwar, Taluka and District Dharwar,
 7. Hiremath Balayya Malayya of Dharwar, Taluka and District Dharwar.---
- Respondents.

Shri B. S. Patil assisted by Shriyuts A. S. Kambli, S. M. Wall, M. G. Agadi and G. R. Nalawadi, pleaders for the petitioner.

Shri K. K. Shah, Advocate (O.S.) Bombay and Shri V. R. Mudvedkar, pleader assisted by Shriyuts S. R. Joshi, A.F. Pathan, G. G. Belgaumkar, V. C. Giryapanavar, S. S. Shettar, T. M. Harpanhalli, A. S. Patil, B. R. Tambakad, H. J. Ron and S. V. Karandikar, pleaders for respondent No. 1.

Shri B. G. Gokhale pleader for respondent No. 2.

Shriyuts I. G. Hiregoudar and B. L. Patil, pleaders for respondent No. 3.

The other respondents are absent.

JUDGMENT

1. This is an election petition challenging the election of Dasankop Hasansab Maktumsab, who was declared elected to the Bombay State Legislative Assembly from the Dharwar constituency at the election held on 3rd January, 1952. In that election there were 8 candidates *viz.*, the petitioner and 7 persons shown as opponents in the election petition. Opponent No. 7's nomination paper was rejected. Opponents Nos. 3, 4, 5 and 6 withdrew their candidatures within the time allowed and the final contest took place only between the petitioner, opponent No. 1 and opponent No. 2. After the counting of votes on 21st January, 1952, opponent No. 1 *viz.*, Dasankop Hasansab Maktumsab was declared duly elected. He got 15,210 votes, the petitioner got 13,068 votes and opponent No. 2 got 1,013 votes.

2. Desai Basavara Ayyappa who got the second largest number of votes has filed this petition challenging the election of Dasankop Hasansab Maktumsab.

3. The only contesting opponent is Dasankop Hasansab Maktumsab, who is shown as opponent No. 1 in the petition.

4. Under section 82 of the Representation of the People Act, 1951, a person who files an election petition should join as respondents to his petition all candidates who were duly nominated at the election.

5. The parties to the petition must therefore be referred to as respondents.

6. Dasankop Hasansab Maktumsab who is shown as opponent No. 1 in the election petition will therefore be hereinafter referred to as respondent, as he is the only contesting respondent. The Representation of the People Act, 1951, will hereafter be referred to as the Act.

7. The main grounds on which the election of the respondent is challenged are bribery, undue influence, attempting to procure a ballot paper in a fictitious name with the connivance of the agents of the respondent, the hiring and procuring by the respondent of motor trucks for the conveyance of electors to and from polling stations on the election day, *i.e.*, 3rd January, 1952, obtaining or procuring the assistance of the Watandar hereditary Patil of Vanhalli serving under the Government of the Bombay State for the furtherance of the prospects of the respondent's election, the filing of a false return of election expenses and declaration verifying the false return of election expenses, systematic appeals by the respondent and his agents to voters to vote on the grounds of caste, race, community and religion and use of or appeal to religious symbols of bullocks and national symbols of Mahatma Gandhi and Pandit Nehru and on the ground that by reason of the corrupt practices of bribery and undue influence which extensively prevailed the election had not been a free election and further by reason that coercion and intimidation had been exercised by the respondent and his group of people the election had not been a free election, that the result of the election had been materially affected by the various corrupt and illegal practices referred to above, that the nomination paper of the respondent was improperly accepted and that thereby the result of the election had been materially affected.

8. The petitioner, therefore, prays that the Tribunal should declare the election to be wholly void and that the election of the respondent should be declared as void. There is also a further prayer that the Tribunal should declare the respondent to be disqualified for membership of the Legislature of the Bombay State for six years.

9. The usual general prayer for other appropriate reliefs and costs is also added in the petition.

10. In addition there were other grounds on which the election of the respondent was challenged but as these grounds were not pressed at the time of the arguments by the learned pleader for the petitioner, they are not referred to.

11. In the list of particulars attached to the petition the following particulars have been given of the various corrupt and illegal practices referred to in the petition:—

- (i) *Bribery*.—The respondent by his agents Sheshagirigouda Patil of Vanhalli, Babu Pendhari of Hebli, Mudkappa of Hebli, Rahamansab of Vanhalli, Basappa Meti and Rudrappa Bannigidda of Hebli treated voters of Vanhalli and Hebli to tea on 3rd January, 1952, the date of polling.
- (ii) *Undue influence*.—This happened during the period from 1st December, 1951 to 3rd January, 1952. The respondent by his agent Shivputrayya Pujari of Dharwar city threatened voters in Wards Nos. 1 and 3 of Dharwar with injury if they did not vote for the respondent at the election and that they would incur divine displeasure of Ulavi Basaveshwar if they did not vote for the respondent. Similarly threats of divine displeasure were held out to Muslim voters by Abdul Rahamansab Sayyadsab Javali of Dharwar, who was working as an agent of the respondent. It is alleged that he held out threats of divine displeasure of Allah to Muslim voters if they did not vote for the respondent and he also held out threats that if they did not vote for the respondent they would be expatriated to Pakistan. These threats were given in the mosque on every Friday in December 1951.
- (iii) *Personation or attempt to procure a ballot paper by a fictitious person*.—A person whose name is unknown but whose photograph is attached to the petition attempted impersonation and tried to secure a ballot paper for himself with the connivance of the agent of the respondent in Ward No. 5 of Dharwar city.
- (iv) *Hiring of trucks*.—The respondent hired and procured a number of motor trucks including BYX 1878, BYX 1688, BYX 3226, BYX 1588, BYL 2597, for conveying voters on 3rd January, 1952 to and from various polling stations viz., Hebli, Govankop, Uppin-betgeri, Maradgi and Hanmankop polling stations and polling stations in Wards Nos. 3 and 8 of Dharwar city.

12. In the list of particulars it is stated that the persons responsible for the corrupt practice of hiring and using trucks for conveying voters on the election day are the respondent and his agents Sheshagirigouda Patil of Vanhalli, Babu Pendhari of Hebli, Mudkappa Savadatti of Hebli, Rahamansab of Vanhalli and Rudrappa Bannigidda.

13. In the list of particulars it is stated that the respondent had not included in his return of election expenses the amount spent by him as expenditure for hiring and using loudspeakers from 7th December, 1951 to 31st December, 1951, in Dharwar city and in other villages of the constituency and also the expenses of hiring a loudspeaker for the election meetings held at Akki-peth, Dharwar, on 30th December, 1951, and 31st December, 1951, and addressed by A. A. Khan of Poona. It is also alleged that the expenditure of taking a deputation consisting of about 35 persons from Dharwar to the Karnatak Pradesh Congress Committee at Hubli in order to fortify the position of the respondent as a Congress candidate had not been shown in the return of the election expenses. It is also alleged that the respondent had not shown in the said return any of the expenses incurred by him between the time of his holding himself as a candidate and the time of filing his nomination paper. It is also alleged that the expenditure of an air trip to Delhi to have his Congress ticket confirmed by the Central Parliamentary Board of the Congress party had not been shown in the return of election expenses. It is also alleged that the respondent had not shown in the return of election expenses the amount which he had paid to the Karnatak Pradesh Congress Committee for the purposes of promoting and procuring his election.

14. It is also alleged that processions of bullocks decked and decorated and marched with ritualistic music as on religious occasions were taken out on 25th December, 1951, and 31st December, 1951, and the Lingayats are bull worshippers and the processions were taken out with the sole object of appealing to the religious sentiment of the voters.

15. It is also alleged that large size pictures of Mahatma Gandhi were exhibited from the 1st week of December, 1951 to the 1st week of January, 1952, and that in those pictures Mahatma Gandhi was shown with folded hands as if he was begging for votes for the respondent and on every side of the picture appeal to vote for the respondent was made. It is also alleged that pictures of Pandit Nehru were used.

16. To cover all these allegations 52 issues have been framed. Of these, issues Nos. 17 to 21, 38, 42 and 43 have not been pressed by the learned pleader for the petitioner at the time of the arguments.

17. The written statements of the respondent are Exs. 24, 60 and 84.

18. The allegations of the petitioner regarding the major corrupt practices are denied in the written statements in detail. As regards the minor corrupt practices alleged by the petitioner, the respondent does not admit that any minor corrupt practices under section 124 of the Act had been committed during the election. He has denied that the return of election expenses made by him was false in material particulars. He has denied that the declaration verifying the return is false. He has denied that he had hired a loud-speaker and that he had used it in December. It is also contended by the respondent that the petition is not tenable, as it is not in accordance with the requirements of section 83 of the Act. It is further stated in the written statement that the allegations, if any, which are not specifically denied should not be taken to have been admitted by the respondent. It is further added that the respondent had taken all possible and reasonable means for preventing the commission of corrupt and illegal practices at the election.

19. A few issues have therefore been framed in view of the pleas taken in the written statement by the respondent. Issue No. 23 is whether the respondent proves that he had given instructions to all his drivers not to allow any voters to enter into the trucks and that in spite of these instructions and in spite of protests of the drivers some persons had got into the trucks. Issue No. 40 is whether the respondent proves that he had taken all reasonable means for preventing the commission of corrupt and illegal practices at the election. Issue No. 41 is whether the respondent proves that the petition and the list of particulars filed by the petitioner are not maintainable, because they do not comply with the provisions of section 83 of the Act. Issue No. 50 is whether the respondent proves that the petition is barred by time.

20. In our opinion, it has been proved beyond reasonable doubt that the return of election expenses is false in material particulars and that trucks were procured on the polling day for conveying voters to and from polling stations referred to in the petition.

21. It is alleged by the petitioner that the respondent made an air trip to Delhi in October 1951 in order to get a Congress ticket from the Central Election Board of the Congress party at Delhi and that this expenditure has not been shown in the return of election expenses submitted by the respondent. It is in evidence that the respondent applied to the Karnatak Pradesh Congress Committee for a Congress ticket on 5th September 1951, and this application was acknowledged on 17th September 1951. It is also in evidence that other persons had also applied for the Congress ticket including Mr. Hukkerikar, who is admittedly one of the leaders of the Congress party at Dharwar with long service in the Congress party. It is also in evidence that the respondent was a member of the Muslim League, Dharwar, till about 1947. It is the allegation of the petitioner that the respondent was in fact the President of the Dharwar Muslim League. This is denied by the respondent, although the allegation finds support in the evidence of the President of the Dharwar Taluka Congress Committee (Ex. 632A). It is also in evidence that the Central Election Board of the Congress party held its sitting at Delhi in the month of October 1951. It granted a Congress ticket to the respondent about the 15th of November. It is also in evidence that the respondent went to Delhi about the 18th of October and stayed there for about 10 days. It is the case of the respondent that he had been to Delhi to see Delhi and to attend the Congress Session on the 18th. He has also stated that he attended the meeting of the All India Congress Committee. It is also in evidence that the Taluka Congress Committee did not support the respondent. It is therefore not at all unlikely that one of the objects of the visit of the respondent to Delhi was to persuade the Central Election Board to give him a Congress ticket. What the Karnatak Pradesh Congress Committee was to do was to send recommendations to the Central Election Board but the final decision rested with the Central Election Board at Delhi. Although it is likely that the respondent had gone to Delhi to get the Congress ticket, we are not prepared to hold that this was the only object or that this was the main object of his visit to Delhi.

22. At this stage we must refer to the unsatisfactory state of the election accounts of the respondent and the general unreliability of his testimony on oath.

23. When ordered by the Tribunal to produce his election accounts, he produced a small, thin, flimsy 40-page note-book, not at all bound properly and loosely stitched.

24. The respondent had appointed himself as his election agent.

25. As regards his election accounts, he has deposed as follows:—

"I have kept a separate account-book for noting election expenses. It is Ex. 515.... I saw Ex. 515 after the whole book was written and before submitting the return..... Barring Ex. 515 no accounts have been kept of my election expenses, either in separate books or on loose sheets. Nor has Khalandar separately maintained any such accounts."

26. The respondent has deposed that his nephew Khalandar Mahabubsab Dasankop was his trusted manager and that therefore he had put complete faith in him and that the election accounts were written under the supervision of his nephew Khalandar, who is admittedly the manager of the respondent's Bidi factory.

27. The respondent has also deposed as follows:—

"I made no expenses for my election. All the expenditure was made by my manager from the factory. I have no personal knowledge of all the items of my election expenditure. I asked my manager to draw upon the funds of the factory and to spend them for the expenses of the election. For instance, I know of Rs. 300 paid with the application and Rs. 2,000 paid to the Karnatak Pradesh Congress Committee but I do not know of all miscellaneous items. I do not know of any other item spent by me for my election. I do not know any items other than the two items. My manager knows."

28. On this point, his nephew Khalandar has deposed as follows:—

"Ex. 515 was written after the election and at the time of submitting the return. This book has been prepared from the factory khata books. My uncle knows nothing about the accounts or about the expenditure for the election. I only gave Rs. 300 and Rs. 2,000 to Hasansab Dasankop. All the other expenses were incurred by me."

29. Subsequently Khalandar produced account-books of the factory and they are at Exs. 528, 529 and 530. He has further deposed that the election khata in the account-books of the factory is at page 175 onwards in Ex. 528 and that the khata is at Ex. 532.

30. Khalandar has also deposed as follows:—

"Kird is a Roz kird containing daily expenses. Before the election our accounts consisted of a Roz kird and a khata book. After opponent No. 1 stood as a candidate for the election the election expenses were entered in the same Roz kird or day-book, and in the khata book a fresh khata called "Election Khata" was opened. The election khata contains references to the pages of the kird book and *vice-versa*. The election expenses were at first entered in the Roz kird and were subsequently noted in the khata when it came to be written out. There is a personal khata of Dasankop in our khata book."

31. It is therefore clear that no separate accounts were kept of the election expenses of the respondent. This is clearly contrary to the provisions of section 44 of the Act, which reads as follows:—

"Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed."

32. Nor were any regular accounts maintained.

33. It is stated by both the respondent and his nephew Khalandar that, apart from the two items of Rs. 300 and Rs. 2,000 paid to the Congress, all the other items of expenditure were incurred by Khalandar without any knowledge of the respondent.

34. The respondent has also deposed as follows:—

"Khalandar Mahabubsab Dasankop is my manager. Khalandar was my trusted manager. I therefore put complete faith in him. I do not know what he did for my election... I do not know whether telegrams sent and correspondence carried on regarding my election were paid for by me. My manager knows it. The money asked for by the Congress workers was paid by my manager. I do not know what printing work was got done by us or for us in connection with my election and what expenses were incurred by my manager."

35. It is also stated by Khalandar that whenever he wanted money for election expenditure, he took the money from the factory moneys. The election expenditure was incurred admittedly out of the general moneys of the respondent and the moneys spent for the election were not separate. The khata shows a credit entry of Rs. 6,333 on 10th March 1952 and this figure correspond precisely with the total expenditure shown in the election return. In the election return, receipts must be shown and they have been shown on different dates beginning from 14th September 1951. But actually these receipts have not been shown in the election khata. In the election khata only one receipt is shown viz. Rs. 6,333 on 10th March 1952, which is at variance with the details of the receipts shown in Part B of the Return. Even in this part of the return what has been done is merely to show items of receipts exactly equal to the items of expenditure incurred on various dates. If the entries in Part A of the return are correct, they should have been shown as credit or receipt items in the election khata. But none of the entries in Part A of the return is shown in the election khata.

36. Khalandar has further deposed as follows:—

"I have not shown in the accounts to whom the payment was actually made by me, because the man with the bill himself used to come and take the amount.... If we take petrol on credit, that is not taken into account. We have kept no tippons to show the petrol taken on credit from various people on various dates..... From all my account, khata and kird, I cannot say what items have been taken on credit and if taken on credit how many of them have been paid and how many still remain to be paid..... The signature on voucher (Ex. 556) is mine. The contents of the voucher are also in my handwriting. I gave tea to Congress workers in Dharwar and so I gave a receipt in my name."

37. It is therefore clear that vouchers have not always been taken from the persons to whom the actual payments were made.

38. Khalandar has also deposed as follows:—

"In respect of articles purchased or items taken I never made entries on the dates of purchase or on the dates of obtaining the articles but I used to make entries on the dates on which payments were made in respect of those articles."

39. It is admitted by Khalandar the nephew of the respondent that no entries were made in the election accounts whenever something was taken on credit. It is therefore admitted that the incurring of expenditure was not properly shown on proper dates in the election accounts or in the election return.

40. It is also admitted that though some trucks were procured from different persons, the value of service of the trucks was not entered in the election accounts. The explanation given is that this was not shown because the trucks had been given free. But the law on this point is clear and the return must clearly show the value of services of the trucks.

41. Moreover in the election return, the amounts unpaid have all been shown as nil, which is admittedly incorrect. It is admitted that in respect of petrol nearly on all the dates when payments were made to Javali there was a balance unpaid. This is also borne out by the petrol account of Dasankop the respondent in the account-books of Javali who was the polling agent of the respondent and whose evidence on this point there is no reason to disbelieve. Javali is for all practical purposes the witness of Hasansab Dasankop and his evidence is not at all challenged by Dasankop.

42. Moreover only some of the payments made to Javali were included in the return and not all. It is admitted that no separate account was kept of the petrol used for election and petrol used for personal or private use unconnected with

the election. It is admitted that there is nothing to show how much petrol was used for the two purposes. But still, only some petrol is shown in the return. Javali has also stated that Hasansab Dasankop used to buy petrol generally for cash and rarely on credit. But the election return shows only a very few items of cash purchase of petrol amounting to not more than 35 gallons and the return shows more than 300 gallons purchased on credit from Javali. But according to Javali, the quantity of petrol purchased on credit was very small and a much larger quantity was purchased on cash.

43. It is also the case of the respondent that certain items were wrongly entered in the election accounts and in the return. For instance, he says that 13 gallons paid for on 3rd October 1951 were wrongly entered in the election khata by him i.e., Khalandar. But he adds that he does not remember for what purpose these 13 gallons had been used. If he does not remember for what purpose these 13 gallons of petrol had been used, how can he say that the amount of these 13 gallons was wrongly entered in the election khata?

44. The respondent and Khalandar have deposed that on 3rd January 1952 the date of poll, they had put petrol in four trucks and that they paid cash for the petrol. But in the return of election expenses this purchase is not shown at all. They have also deposed that they had put four gallons of petrol in a car on 31st December 1951 to enable Coelho to go to Belgaum from Dharwar to get permits from the Regional Transport officer for 14 trucks. But this expenditure is not shown in the election return.

45. We feel no doubt that the respondent had failed to maintain separate account. What seems to have been done by the respondent is that no separate accounts were kept of the election expenditure and at the time of sending the return some items were selected so as not to exceed the maximum allowed by law and so as to make it appear that there is still a margin of about Rs. 700 below the maximum allowed. We have no doubt that the omissions were due to the Rule that the total expenditure shown in the return should not exceed Rs. 7,000.

46. Now we shall turn to the general unreliability of the evidence of Hasansab Dasankop the respondent.

47. Although he has a petrol khata for over a year from 1st January 1951 running into several hundreds of rupees with Javali, this is denied by Hasansab Dasankop.

48. Dasankop admits that he was a member of the Muslim League till about 1947 but he denies that he ever was the President of the Dharwar Muslim League. Many of his witnesses plead lapse of memory on this point but are not prepared categorically to deny that he was the President of the Dharwar Muslim League. But we have the evidence of the President of the Dharwar Taluk Congress Committee that Hasansab Dasankop was in fact the President of Muslim League and on that ground the Taluka Congress Committee had opposed his candidature. He impressed us as a person of integrity and his evidence has impressed us as truthful. We accept his evidence and hold that Hasansab Dasankop has falsely denied that he was ever the President of Dharwar Muslim League.

49. As an instance of his prevaricating replies the following extract from his deposition may be given:—

"Ex. 342 is the photo of my building opposite the Vijaya talkies. Ex. 349 is also a photo of the same building. There was a board with Gandhiji's picture hung up on the building. I again say that I do not remember if there was a board hung up on the building. I do not remember there was hung up a board on that building, with Mahatma Gandhi's picture with folded hands and my name in Kannad and the symbol of two yoked bullocks."

50. The respondent has deposed that he has no petrol account at Dharwar, when he has admittedly two petrol accounts, one with M. H. Javali and the other with Trilochanlal. His khata with M. H. Javali has actually been produced in Court and it shows that it is from the 1st of January 1951 onwards running into several hundreds of rupees.

51. He has deposed that, apart from the expenses of petrol incurred on 2nd January 1952 and 3rd January 1952 he has not incurred any other election expenses on those two days and that he has not incurred any expenses on account of workers and volunteers on those days. When his pleader objected to the question and the question was again repeated, the witness answered that he has incurred some expenditure on volunteers and polling agents. Later on he has stated that the volunteers and workers to whom he had made payments on 3rd January 1952 were Congress workers and volunteers and that he does not remember their names. He has also added that he has not made any entries in the accounts of moneys paid to

volunteers and others. He has also added that he had not paid anything to the clerks who had written the accounts, because they were his usual clerks.

52. Later on he has repeated his statement that in December and January upto 4th January 1952 there was no account of his regarding petrol with Trilochanlal and M. H. Javali.

53. The following extract from his deposition also needs no comment:—

"I had a station wagon which had gone to the Karnatak Pradesh Congress Committee, Hubli.

Question:—You have a station wagon and it had gone to Hubli for deputation?

Answer:—It had gone and I again say I do not remember. Four or five cars had gone. My nephew Khalandarsab was in charge of the deputation arrangements."

54. As regards his election office, this is what he says in his deposition:—

"I had no separate election office of my own. Congress office was my office. Whatever work I did in connection with my election was done in the Congress office. There was no manager for the Congress office. District and Taluka Congress Presidents were running the office.....It was not in charge of my manager. It was in charge of all the Congress workers. I and my manager did not look that office. This office was started after my nomination paper was accepted. The Taluka Congress Committee had an office separately. The District Congress Committee is in Hubli and not in Dharwar. The Taluka Congress Committee is in big bazar, about half a mile from my building. During the election time the office of the Taluka Congress Committee used to be open but it was a small office. The registers of the Taluka Congress Committee used to be in their office in the bazar, and not in my building. My building was used for only election work. My election work was also looked after by the Congress workers who were working that office. They used to meet there. My manager used to supervise and I used to supervise the work of the workers. Mr. Burli used to supervise the work of the Congress workers.

55. But his manager Khalandar says that he never supervised the work in the office in the building. Mr. Burli, the President of the Dharwar Taluka Congress Committee, says that he had nothing to do with that office.

56. The following extract from his deposition also needs no comment:—

"I gave instructions to my pleader for preparing my written statement. At that time my manager gave all the instructions to my pleader. I now finally say that I gave no instructions for preparing the written statement to my pleader."

57. When cross-examined about the penalty said to have been recovered from him for the payment of tobacco tax, he gave unsatisfactory and evasive replies as can be seen from the following extract from his evidence:—

"It is not true that the Government had recovered a penalty from me for evading payment of the tobacco tax in 1943. I do not remember the amount of the penalty. I do not remember that the amount was Rs. 10,000. I do not remember the year of the penalty. It is not true that the Government imposed the penalty on me after holding that my tobacco accounts were unreliable. The penalty was imposed for not showing whole stocks, the reason being that the law was new and the clerks negligent or even mischievous. I had signed the return of the tobacco stock in 1943 as a licensee. I do not remember whether I had made a declaration of the return. It is not true that in 1949 I was fined Rs. 200. It is not true that the excise authorities imposed a fine of Rs. 200 for obstructing the work of making a panchnama. I do not remember whether I had paid Rs. 200. That amount was collected as penalty from me."

58. The respondent has deposed that he does not remember whether he had paid the telephone bill or whether he had paid a bill for electric connection for his telephone. He has also added that whatever moneys were asked by the Congress workers used to be paid by his manager. He has stated as follows:—

"I made no expenses for my election. All the expenditure was made by my manager from the factory. I have no personal knowledge of my election expenditure. I asked my manager to draw upon the funds of the factory and to spend them for the expenses of the election. For instance, I know of Rs. 300 paid with the application and Rs. 2,000 paid to the Karnatak Pradesh Congress Committee, but I do not know of all miscellaneous items. I do not know of any other item than the two items. My manager knows."

59. On the point of payment of moneys for election expenditure the respondent's manager Khalandar has stated as follows:—

"When Congress workers came to me and said that they wanted to go to my constituency, I used to put petrol. I took no receipts from them but they used to bring receipts against which I made payments. These expenses were entered in the factory khatas as well as in Ex. 515 as well as the returns.....

I cannot say for what date the bill regarding the payment of petrol on 5th January 1952 related. Same is the answer for 6th January 1952.....

If anybody came and gave a bill for payment I used to ask him what it was for. I did not use to satisfy myself as to whether work was done for which bills were made. I trusted them. Govardhanrao brought me some bills, Gudi also brought me some bills. Also Coelho.....

I have not shown in the accounts to whom the payment was actually made by me because the man with the bill himself used to come and take the amount.....

Only two clerks wrote the election khatas. Ex. 515 was written by two clerks and Exs. 528 529 and 530 were written by my head clerk. I have not included their remuneration as part of the election expenses because I do not consider it to be election expenses. There is no separate petrol khata for election work. We had a credit petrol khata with M. H. Javali for 1951 to February 1952. We had a petrol credit khata with Trilochanlal but we took no election petrol from him. But we may have taken petrol from Trilochanlal. Khairusab and Gudi brought bills for election expenses for Hebli polling station on 3rd January 1952. I do not know if they brought the bills without making payments at the village. There are no vouchers or bills other than Ex. 445 (file).....

After 17th December 1951 there is an expenditure of Rs. 221-12-0 on account of petrol expenses in the election khata on 21st December 1952 at the Javali pump. I knew that the expenses of petrol for the candidates and the expenses of petrol for other work should be kept separate. The amount of Rs. 221-12-0 shown at Ex. 552 in Ex. 529 is in respect of election petrol expenditure for Hasansab Dasankop and others. We made that payment in one lump-sum. The voucher is Ex. 553. It is a part payment of the khata account. The item of Rs. 256-3-0 spent on 3rd January 1952 for refreshments, tea, food has been shown in the return.....

If we take petrol on credit that is not taken into account. We have kept no tippans to show the petrol taken on credit from various people on various dates.....

From all my account, khata and kird, I cannot say what items have been taken on credit and if taken on credit how many of them have been paid and how many still remain to be paid.....

Several people who were working for opponent No. 1's election had gone to villages outside Dharwar on 3rd January 1952. I do not know whether they had gone on 2nd January 1952. As a matter of fact I do not know when they went. I do not know who paid their expenses. We had not sent them and therefore expenses on their account are not shown in our account-books. I do not know who paid their expenses...

The signature on voucher (Ex. 556) is mine. The contents of the voucher are also in my handwriting. I gave tea to Congress workers in Dharwar and so I gave a receipt in my name.....

In respect of articles purchased or items taken I never made entries on the dates of purchase or on the dates of obtaining the articles but I used to make entries on the dates on which payments were made in respect of those articles.....

There is a separate khata called, "Station Wagon Khata" in the khata book. The khata book is of the firm. The election khata of Dasankop is also in the same book. No items in the said station wagon khata have been shown in the election khata.....

On 5th January 1952 there is an item of Rs. 139-14-0 paid to Javali for petrol purchased. This must have been in connection with the petrol purchased previously for election purposes. I have nothing with me to

show on what date petrol which was paid for on 5th January 1952 by payment of Rs. 139-14-0 was actually purchased and for what purposes of the election. I have nothing of that kind to show that either here today or anywhere. (The question is repeated and the same answer is given). I cannot say for how many gallons Rs. 139-14-0 were paid. It is because that there was a balance even after payment of Rs. 139-14-0 on 5th January 1952 that a further amount of Rs. 135-8-0 was paid to Javali. There was a balance of Rs. 135 on the 5th January 1952. I cannot say for how many gallons Rs. 135 was. I cannot say for what purchase of petrol and on what date this payment of Rs. 135 was on 6th January 1952. There was some balance and that is why on 29th January 1952 a further sum of Rs. 15-2-0 was paid to Javali.....

The total election expenditure is Rs. 6333-5-0 and this amount was taken by me from the moneys of the firm on various dates. The moneys taken from the firm on various dates are not shown in the election khata but only the total amount is shown in the election khata as having been taken on 10th March 1952. The amount is Rs. 6333-5-0. This is entered in the kird. 10th of March 1952 is the date of return. H. M. Dasankop and Sons and Company have no outsiders as partners. Only Dasankop and his sons are the partners of the firm. This is entered in the Roz Kird at page 365 on 10th March 1952. Rs. 4333-5-0 are debited in the name of Hasansab Dasankop and the same amount is taken to the election khata on 10th March 1952."

We consider the above replies as highly unsatisfactory.

60. We, therefore hold that the respondent's evidence is generally untrustworthy.

61. *Loudspeaker*.—It is the allegation of the petitioner that loudspeaker was hired by Hasansab Dasankop from the local dealer M. P. Patil and that this item has not been shown in the return.

62. There is no evidence that a loudspeaker has been used on a number of occasions in December 1951. But there is evidence that it was used at the meeting held at Dharwar at Akki-peth and addressed by A. A. Khan of the Fourth Party.

63. Mr. Hallikeri the President of the District Congress Committee and General Secretary of the Karnatak Pradesh Congress Committee has deposed that he had arranged only one meeting of Khan at Dharwar and that the loudspeaker expenses must have been paid by his Prachar Office at Dharwar. But he does not say that they had been paid.

64. Ex. 379 a clerk of M. P. Patil has deposed that at first the bill for the loudspeaker was made in the name of Hasansab Dasankop and that some days later it was changed to the Taluka Congress Committee under instructions from his master. (*Vide* bills Exs. 380 to 383, receipt No. 256 in Ex. 387 for Rs. 200, day-book entries Exs. 389 and 390 in the day-book). These entries in the books of M. P. Patil made in the ordinary course of business and showing that the loudspeaker had been hired by Hasansab Dasankop deserve credence. It derives added weight from the circumstance that neither the Taluka Congress Committee, the District Congress Committee nor the Karnatak Pradesh Congress Committee comes forward to depose that the loudspeaker for the meeting at Akki-peth addressed by Khan had been hired by the Congress organisation. Hasansab Dasankop examined the President of the District Congress Committee as his witness but objected to the admission in evidence of the accounts of the District Congress Committee whose President was examined by him as his own witness. We must therefore draw an adverse inference that, if the accounts had been exhibited, they would not have supported the case of Hasansab Dasankop. The evidence of Gudi (Ex. 792) and Coelho (Ex. 790) that they paid the expenses of loudspeaker out of their pockets is unreliable. They did not take a receipt. Govardhanrao the propaganda Secretary (Ex. 781) says that he has no personal knowledge about the hiring of loudspeakers and that expenditure must have been borne by the Karnatak Pradesh Congress Committee. M. P. Patil has not been examined by the respondent. Gudi's evidence is that he and Coelho shared the expenses on this and other loudspeakers as the Karnatak Pradesh Congress Committee, though pressed to pay, declined.

65. We, therefore, hold that Hasansab Dasankop had hired a loudspeaker from M. P. Patil and Company for the meeting at Akki-peth, Dharwar, and that this item of Rs. 65 has been wrongly omitted in the return.

66. *Deputation to Hubli*.—It is alleged by the petitioner that Hasansab Dasankop took a deputation of 35 persons to the Karnatak Pradesh Congress Committee at Hubli to persuade the Karnatak Pradesh Congress Committee to recommend Hasansab Dasankop to the Central Election Board of the Congress.

67. In the written statement there was no specific denial of this. As the original written statement contained several evasive statements the respondent was allowed to put in an additional written statement. But even in this the allegation about the deputation to Hubli had not been denied specifically.

68. The allegation of the petitioner is two-fold:

(1) that the deputation was organised by Hasansab Dasankop who arranged cars and spent for petrol and

(2) that this expenditure was not shown in the return.

Neither of these allegations has been denied in the written statement.

69. At the hearing, there has been a surprising change of front by Hasansab Dasankop. He led a good deal of evidence to show that he had nothing to do with the deputation and that he did not arrange the cars for transporting the members of the deputation to Hubli. But now it is contended that he has in fact shown Rs. 34 as the cost of petrol for using cars on 3rd October 1951 to take the members of the deputation to Hubli. It is admitted by Hasansab Dasankop that his nephew was in charge of the deputation arrangement. The case of Dasankop is clearly self-contradictory. We are not prepared to hold that the item of Rs. 34 shown on 3rd October 1951 relates to the expenditure of petrol on the deputation to Hubli, because if it did, it would have been so stated by Hasansab Dasankop and Khalandar at the beginning of his case and not at a very late stage. In fact Khalandar in his evidence first stated that he does not know how 13 gallons of petrol had been used on 31st October 1951.

70. On 5th September 1951 the respondent applied to the Karnatak Pradesh Congress Committee for a Congress ticket for the Dharwar Assembly constituency. He arranged a deputation to the Karnatak Pradesh Congress Committee to support his candidature and to adopt him as a Congress candidate. We therefore hold that he held himself out as a candidate on 5th September 1951 and that all the election expenses from that date ought to appear in the election return. We hold that the expenses of the deputation should have been shown and that they have not been so shown.

71. The filing of a return of election expenses which is false in any material particular is a minor corrupt practice [*vide* section 124 (4)].

72. We hold that the omission to show the loud-speaker expenditure of the meeting at Akki-peth, the omission to show the value of the services of the motor trucks used on 3rd January 1952 and petrol purchased on 31st December 1951 and 3rd January 1952 relates to material particulars. The actual expenditure shown is Rs. 6,333 and if these items are also shown, perhaps the maximum would have been crossed.

73. We, therefore, hold that the respondent, who is himself his election agent, filed a return of election expenses which is false in material particulars and that he is guilty of a minor corrupt practice under section 124(4) of the Act.

74. What then are the consequences? This is not a corrupt practice specified in section 123 and therefore does not come under section 100(2)(b). But section 140 applies. This corrupt practice therefore shall entail disqualification for membership of Parliament and the Legislature of every State for six years from today.

75. It is alleged in the petition that the respondent had hired or procured a number of motor trucks including BYX 1878, 1688 and 3226 and used them for the conveyance of electors on the election day to and from various polling stations including Hebli, Govankop, Dharwar city, Uppin-betgeri and Maradgi. Later on he also gave further particulars in which he mentioned a few more trucks bearing Nos. 2597, 1588, 4130 and 1593.

76. Under section 123, sub-section (6) of the Act, the hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll is a corrupt practice. What is a corrupt practice under this section is therefore hiring or procuring of trucks with a certain object. On this point a good deal of evidence has been led by both sides. The following witnesses have been examined on behalf of the petitioner—Exs. 248 to 251, 267, 268, 270 to 272, 228, 168, 204 (39 cards), 206 (report), 207 (list of 39 persons), 217 to 220, 234, 235, 240, 242, 244, 221, 222, 223, 241, 243, 225, 226, 269, 248 to 251, 267, 268, 279 to 285, 333, 334, 351, 417, 355, 359, 357 and 358.

77. On behalf of the respondent the following witnesses have been examined viz., Exs. 620, 621, 622, 640, 641, 647, 648; 649; 650 in regard to Maradgi; 623, 633, 634, 635, and 636 in regard to Somapur, 637 and 638 in regard to Shivalli, 651, 652 and 654 in regard to Kardigud, 751, 752, 754 and 755 in regard to Uppinbetgeri, 753, 756 and 757 in regard to Hanmankop, 738 and 758 with regard to Pudukalkatti which is under the Hanmankop polling station and Ex. 730 in regard to Dharwar. In regard to Vanhalli and Hebli there is a large volume of evidence on behalf of both the sides. On behalf of the petitioner the following witnesses were examined—

Exs. 164, 217, 219, 218, 220, 221, 222, 223, 228, 234, 235, 240, 241; 242, 243, and 244.

On behalf of the respondent Exs. 659 to 666, 693 to 695, 698 to 700, 701 to 708, 714 to 718, 767, 797, 798 and 799 were examined. In addition, with regard to the truck used at Dharwar the respondent has examined Exs. 719, 725 and 732. In addition, he has examined the owner of the truck bearing No. 3226 viz., Ex. 789 to prove that his truck had not been given. Similarly he has examined Ex. 801 in regard to truck No. 1688.

78. As regards truck No. 1878, it is the case of the petitioner that this truck had been seen by the Deputy Superintendent of Police Mr. Vastrad who was then touring the constituency as a Police Officer on election Bandobast duty. At that time, according to Mr. Vastrad (Ex. 164), he found the truck carrying a large number of persons and when he stopped it he found that there were 40 persons in the truck and when the driver was questioned he said that he was carrying voters. The Deputy Superintendent of Police also questioned the passengers in the truck and they admitted that they were voters from Vanhalli and going to Hebli to vote. The Deputy Superintendent of Police was then accompanied by police constables and Mr. Angadi the Police Prosecutor (Ex. 228). The Deputy Superintendents, of Police with the assistance of the constables collected the identity cards issued by the candidates to various voters, which were found with the 40 persons in the truck. These 40 cards have been produced before us. At the same time, Mr. Vastrad made a report to the District Superintendent of Police, which is at Ex. 206. To this report was attached a list (Ex. 207) showing the names of 40 persons who were found in the truck.

79. It is admitted by the respondent that this truck was one of the 14 trucks for which he had applied for and secured permits from the Regional Transport Officer and that the truck was stopped by the Deputy Superintendent of Police Mr. Vastrad. It is also admitted that the cards were collected from 40 persons by Mr. Vastrad. But it is the case of the respondent that these 40 persons had got into the truck forcibly in spite of the protests of the driver. It is also the case of the respondent that Mr. Vastrad and his constables collected only the identity cards issued by the Congress candidate and did not collect the identity cards issued by Mr. Desai the petitioner. Mr. Desai's symbol was a hut and the symbol of the respondent, who stood on the Congress ticket was a pair of yoked bullocks. After carefully considering the evidence and arguments of both sides, we are not prepared to hold that Mr. Vastrad collected only the cards issued by the Congress candidate. If it was his intention to do so, then one of the cards collected would not have been the hut-card. We fully accept the evidence of Mr. Vastrad on the point, because we see no reason why a Police Officer of his status should depose falsely.

80. It is admitted that the respondent had applied to the Regional Transport Officer, Belgaum, for permits to use 14 trucks on the polling day, but it is his case that he actually used only four trucks viz., one of himself bearing No. 2021, one of Abdul Haji Contractor bearing No. 1878, and two of the Plywood Company. But on this point, when questioned the respondent had to look to a chit brought by him before he could answer how many trucks he had used. His evidence on this point is as follows:—

"Out of the four trucks used one belonged to me, one to Contractor, and two to the Plywood Company. (Note:—The witness gives this answer after looking to a chit which he has with him)."

81. It is the explanation of the respondent that he applied for permits for 14 trucks because he thought that several of them might not be in a fit and working order on the date of the polling or that some of them might not be available. In the light of the evidence before us we consider this explanation puerile.

82. We do not think that the number 14 was an accidental coincidence. We notice from the list of polling stations that outside the city there were exactly 14 polling stations in this constituency and therefore we think that the idea of the respondent in applying for permit for 14 trucks was to use on the basis of one truck for each polling station.

83. But in another part of his evidence, Dasankop the respondent has deposed as follows:—

"I took four trucks from the plywood company. One truck is mine. I took two trucks of Contractor. I took trucks of Javali Magdum Huseinsab. I do not remember the names of the owners of the other trucks."

84. The respondent has also stated that his word is the only evidence to show that the 10 other trucks were not used and that only four trucks were used. We are not prepared to believe his word that no other trucks had been used. He has led the evidence of the owner (Ex. 801) to show that his truck bearing No. 1688 had not been used. It is the evidence of this witness that Gudi, one of the Congress volunteers, said to him that he would require his truck for carrying volunteers and that Gudi said so 7 or 8 days before the election day. Gudi in his evidence at Ex. 792 has deposed that the whole arrangement of asking for trucks and getting permits for them was in charge of Coelho. We are not prepared to believe Ex. 801 whose demeanour did not create a favourable impression on us. We note that he was formerly a member of the Muslim League and therefore he is obviously interested in the respondent. The other owner of a truck is Ex. 740. He is the owner of two trucks Nos. 1588 and 1593. He has stated that Dasankop the respondent had obtained a permit for the use of his two trucks. But according to him the respondent did not use them. According to him, truck No. 1593 was used for the transport of foodgrains on 3rd January 1952 within the limits of Dharwar taluka and the other truck No. 1588 was under repairs. We do not accept the evidence M. H. Javali on this point. He is deeply interested in the respondent. He was Vice-President of the Muslim League, Dharwar, and had gone with the respondent to Delhi. The respondent has a petrol khata with this witness. It may be noted that the 3rd of January 1952 was a public holiday and we do not think that the Government godowns would have remained open on that day. Javali has further stated that he remembers that truck No. 1588 being out of repairs because he had instructed his manager to hand over only truck No. 1593 to Dasankop. It is therefore quite likely that truck No. 1593 must have been used.

85. There is no specific denial regarding truck No. 1688 in the written statements (Exs. 24, 60 and 84). What is merely stated is that truck No. 1688 was not used for conveying voters. Even if truck No. 1688 had not been used for conveying voters, it may have been used for some other purpose. To say that it was not used for conveying voters is not to say that it was never used for any purpose.

86. It was specifically pointed out to the learned pleaders for the respondent that denials must be specific and the provisions of the Civil Procedure Code on this point were also pointed out to them. Thereupon the learned pleaders for the respondent gave additional written statements (Exs. 60 and 84). Even in these written statements there is no specific denials that truck No. 1688 had been used on the date of polling.

87. The respondent in his evidence has stated that he secured permission to use 14 trucks on the election day and that the trucks were to be used for carrying volunteers. But in his evidence the respondent has stated as follows:—

"I had no workers or volunteers of my own at Vanhalli on the polling day. On the election day there were no workers or volunteers of my own at any other place. They were all Congress worker. Nor at places or villages come in the evidence of witnesses."

88. But Govardhanrao (Ex. 781) who was in charge of propaganda and publicity of the Congress office at Dharwar and at various other places has stated as follows in his evidence:—

"I had not sent volunteers and workers to Vanhalli Hebli or any other places. I had not sent any Volunteers on the election day or the day previous from the Prachar office."

He has also stated that he had not asked any other candidate for the Congress to procure trucks and place them at his disposal. Coelho, who was the executive member of the District Congress Committee and who was also in charge of the

Prachar office as Assistant of Govardhanrao in the Dharwar Prachar office, has stated in his evidence that 14 trucks had been procured for the Congress purpose and that Mr. Dasankop the respondent had suggested the names of the truck owners that Dasankop gave 14 applications which were signed by the respective owners of the trucks and also signed by Dasankop. He has stated that the Congress prachar office did not send trucks for the use of any other candidate excepting Dasankop and that all the trucks were meant for Dasankop and that therefore petrol in the trucks was put on behalf of Dasankop by his manager Khalandar. We may pause here and observe that, in our opinion, the Prachar office which was run at Dharwar was exclusively meant for making propaganda on behalf of the respondent. Govardhanrao says that it was a Prachar office meant for the Congress candidates in general. But, if we analyse the evidence, it would appear that the Prachar office was meant exclusively for the benefit of the respondent. The office was located in the building belonging to the respondent and which the respondent was using formerly for stacking bidi-leaves. A telephone was installed there by the respondent. It is in evidence that voting cards of no other candidates were written in that office. The office had not maintained any accounts of expenditure. No clerk or typist was engaged for the office. Govardhanrao has stated that the street boards which he had got prepared were only for Dasankop and for no other candidate. If all this evidence is carefully considered, it would be pretty clear that the Prachar office which was opened in Dasankop's building was virtually Dasankop's own office.

89. The Delimitation Order shows that there were only 54 villages in this constituency and that there were only 14 polling stations apart from those of Dharwar city. But none of these polling stations are separated by more than about 12 to 14 miles from one another. Even if any volunteers were to be sent to 14 polling stations on the date of polling, it would certainly be unnecessary to get permits for 14 trucks or even to use four trucks.

90. The explanation given by the respondent that these trucks were required for the volunteers and workers does not inspire our confidence. Firstly the respondent has stated that he had no volunteers of his own. Govardhanrao has stated that he had not sent volunteers on the 2nd or the 3rd of January 1952. In a case of this type, which is fought obviously with keenness on both the sides, we must scrutinise the oral evidence with utmost care. Having done that and having closely studied the evidence with regard to the 14 trucks and the use of some of them on the election day we have no doubt in our minds that the general idea of the respondent was to use one truck for each polling station on the election day for the purpose of conveyance of voters to and from each of polling stations.

91. Reverting to the particular truck which was stopped by Mr. Vastrad the Deputy Superintendent of Police in the act of carrying as many as 40 electors to the polling station at Hebli, we have no hesitation to say that the story which has been told by the respondent and his witnesses regarding the forcible entry of the voters into the truck at the instance of Fakirappa Arennavar is not worthy of least credence. The story starts with the respondent's statement that he had warned his drivers not to carry voters in the trucks. We have found considerable difficulty in placing faith in the respondent's word and in view of the fact that he had applied for permits for 14 trucks we do not believe him when he says that he had warned the drivers not to carry voters. If the drivers had been given such a strict warning as we are told by the respondent, then the driver of the truck No. 1878 would not certainly have stopped the truck and allowed any persons to board it. The story that Fakirappa Arennavar gave threats to the driver that unless voters were admitted into the truck he would damage the tyres is hard to believe. It is not at all likely that 40 persons could have been found in one group at one spot on the road. We also do not accept the explanation that the truck had gone to Morab and was returning to Dharwar via Vanhalli. The evidence of Govindraddi Mhasti has not impressed us as true. He is clearly interested in the respondent and his evidence that he had not met Govardhanrao at 1 A.M. on the night of 2nd January 1952 with some Congress workers from Morab does not strike us to be true. In the first place it is not necessary why this man who was the polling agent in the Navalund constituency should have come to Dharwar at all and that too with some workers from Morab and when Govardhanrao had no volunteers at his disposal and when no conveyance could be expected from him for the use of the candidates who had stood from the Navalund constituency in which this Govindraddi Mhasti was working as a polling agent. If at all there is any truth in the statement which Govindraddi Mhasti had made viz., that he had met Govardhanrao at 1 A.M. which is certainly a very odd hour, it means that the idea of the respondent and his assistants was to take out these trucks from Dharwar into the mofussil at night so that no one might observe the taking out of these trucks.

92. Coelho has stated in his evidence that he does not know what happened to the trucks placed at the disposal of the Congress and Dasankop in his evidence has stated as follows:—

"I do not know where the four trucks had gone in the course of the polling day because I had given them in the charge of the Congress workers. After the polling was over, the driver of my truck did not meet me on that day."

93. Dasankop in his evidence has also stated that none of his men had gone with the trucks. If a candidate was his own election agent and if he was placing trucks at the disposal of others, it was his duty to see that the rules relating to the election were not infringed and it was his duty to see that his men accompanied the trucks. We are not prepared to accept the respondent's statement that his men did not accompany the trucks.

94. It is also in evidence that Dasankop owns a car No. 1543 and also a station wagon No. 2640. It is also in evidence that on the polling day he had taken a car of one Bagi.

95. Although the respondent cited Rachayya Chikmath the owner of one of the trucks, he did not examine him. He has also not examined the owner of the truck No. BYX 3456.

96. According to him, he had applied for permits for four trucks of the plywood company and only two of them had been used. He had cited the manager of the plywood company as his witness but he has not examined him.

97. The owner of the truck No. 1688 has been examined at Ex. 801. According to him he had sent his truck No. 1688 to Gunjawati forest about 7 or 8 days before the date of the election with no likelihood of the truck returning before the 4th or the 5th of January. But Dasankop had sent applications for permits only on 31st December 1951. If the truck had really gone to Gunjawati forest about the 24th or 25th of December 1951, Dasankop would not have sent an application for a permit for this truck on 31st December 1951. This witness has also not impressed us when he was in the box and we are not prepared to believe that his truck had gone to Gunjawati forest 7 or 8 days before the election day and that it returned to Dharwar only about the 5th of January 1952. Govardhanrao who was in charge of publicity and propaganda in his evidence at Ex. 781 has deposed as follows:—

"Some of the Prachar office, I think, must have asked Dasankop to procure trucks. I cannot say who asked Dasankop to provide the trucks."

98. The respondent in his evidence has stated as follows:—

"Out of the 14 trucks I had actually used only four trucks on the election day. I had placed them at the disposal of the Congress Prachar Committee. Drivers were supplied by me. I had warned the drivers and the Congress people not to allow the trucks to be used except by volunteers and workers. I had also warned them not to allow their number to be in excess of 20."

99. But his nephew and Manager Khalandar has stated in his evidence as follows:—

"The owners of the four trucks supplied the respective drivers. I saw the four drivers at the time petrol was put in the trucks. I do not know their names. I had no talk with them."

He has further stated as follows:—

"I gave all the 14 permits to the owners of the 14 trucks on the day I got the permits. I think it was 31st December 1951. All the owners were in Dharwar and I told them that if we wanted their trucks we would send for them."

100. The respondent in his evidence has stated as follows:—

"I had no workers and volunteers of my own. They were all Congress workers".....I had not sent out any workers or volunteers on the date of the election or on the previous day. I do not know if the Congress had sent any workers on my behalf. Hence I do not know which person or persons went in any particular truck engaged by me. I had given the four trucks in charge of the Congress workers. The number of my truck is 2021. I do not know in whose charge I

gave this truck. I gave all the four trucks on the 2nd of January 1951 but I do not remember the time when I gave the trucks in charge of the Congress workers. Truck No. 1878 belongs to Abdul Rasul Contractor of Dharwar. The truck did not come to me but I sent for the driver on the 2nd. I do not remember what Congress workers had accompanied the driver. I cannot give the name of even the Congress worker who had come with the driver. The two other trucks belonged to the plywood company."

101. As regards the truck No. BYX 3226, it is admitted that this was one of the trucks in respect of which the respondent had applied for a permit. The petitioner's allegation is that this truck was used in Wards Nos. 3 and 8 of Dharwar City and that it also ran over a dog in Ward No. 8.

102. As regards Ward No. 3 the petitioner relies on the evidence of Gadade (Ex. 368), Ex. 369, his written complaint (Ex. 226) made to the Presiding Officer and the evidence of William Bhaskar Lecturer in the Karnatak College, Dharwar, (Ex. 225).

103. On behalf of the respondent Exs. 719, 725, 732 and the owner of the truck (Ex. 789) have been examined.

104. Exs. 719, 725 and 732 are workers and agents of the respondent. We do not accept the evidence of Ex. 789 the owner of the truck, who says that he does not know if a permit had been applied for for his truck. A permit could not have been applied for without his signature on the application for permit. We, therefore, do not accept his evidence.

105. It is admitted by the witnesses of the respondent that this truck was found near the polling station in Ward No. 3. According to the petitioner's witnesses, this truck contained about 20 voters, but according to the respondent, this truck contained only 7 or 8 Hamals. According to the owner of the truck, this truck had not been supplied to the respondent. But, if the truck had not been supplied to the respondent, it is surprising that it was found just in front of the polling station in ward No. 3.

106. According to the Presiding Officer, when he went out on Gadade's complaint, he saw the truck just starting off, which completely belies the case made out by the respondent's witnesses that the truck had not stopped in front of the polling station. We accept the evidence of the petitioner's witnesses on this point and hold that the respondent had used this truck for taking voters to and from the polling station in ward No. 3 of Dharwar city. In view of this finding, it is unnecessary to go into the question whether the voters of Ward No. 8 had also been conveyed in this truck, because we have already found that this truck No. 3226 was procured by the respondent for the purpose of carrying voters to the polling stations in Dharwar city.

107. As regards the truck BYX 2597, it is alleged by the petitioner that this truck was used to convey voters to Hanmankop polling station from Pudukalkatti village. He relies on the evidence of Exs. 248, 225, 267, 268, 270 and 272 whereas the respondent's witnesses on this point are Exs. 751, 752, 745, 748 and 738. The petitioner also relies on a photo said to have been taken of this truck. He has also examined Ningappa Chandargi of Pudukalkatti who was the agent of the respondent himself but who has come to depose on behalf of the petitioner. It is not denied by the respondent that Ningappa Chandargi was his agent. This Ningappa Chandargi pays Rs. 200 as assessment. He has stated that he had himself asked voters to board the truck. Rachayya Chikmath the owner of the truck has not been examined by the respondent. Similarly Madiwalayya Agasar a polling agent of the respondent at Hanmankop polling station, although cited by the respondent, has not been examined and though this witness has been referred to in the evidence of the petitioner's witnesses.

108. Regarding truck No. 1688, it is the petitioner's allegation that this truck was used to convey voters to Govankop polling station from Somapur. The petitioner's witnesses on this point are Exs. 279 to 285 and the respondent's witnesses are Exs. 623, 633 to 636 and 656. According to the petitioner's witnesses, one Baksarsah Bagwan was helping voters to board the truck. The person, although cited by the respondent, has not been examined. One of the petitioner's witnesses on this point is one Shiddappa (Ex. 284) who is an old villager aged about 70. The owner of the truck is S. S. Unkal (Ex. 801). We do not accept his evidence.

109. As regards the truck No. BYX 4130, the petitioner's allegation is that this truck was used for conveying voters to and from Maradgi polling station from the

surrounding villages of Kankur, Talwal and Chandargi. The petitioner's witnesses on this point are Exs. 333, 334, 351 and 417 whereas the respondent's witnesses on this point are Exs. 620, 621, 622, 640, 644, 647, 648, 649 and 650 and also Exs. 637 to 639 who belong to Shivalli. The first group of respondent's witnesses merely say that they went on foot and that voters used to go on foot or in bullockcarts. Their evidence is of a negative type. Witnesses (Exs. 637 to 639) from Shivalli merely say that the road could not have been seen from their village. But the petitioner's witness (Ex. 351) in his evidence has stated that he saw the truck and noted its number. Ex. 334, a petitioner's witness, is an old person aged about 75. A. H. Contractor, the owner of the truck, in his deposition has stated that he gave one truck to the respondent. It is BYX 1878, and not 4130. After carefully considering the evidence, we hold that the petitioner's allegation on this point is proved beyond reasonable doubt.

110. As regards truck No. BYX 1558, the petitioner's allegation is that this truck was used by the respondent to carry voters to and from the polling station in ward No. 8 of Dharwar city. The witnesses of the petitioner on this point are Ex. 357, who is an elderly woman and Ex. 358. The respondent's witnesses on this point are Ex. 609, 731 and 740. Of these, Exs. 609 and 731 are the polling agents of the respondent. Ex. 740 is the owner of the truck M. H. Javali. According to him, his truck No. BYX 1588 was under repairs and he had asked his manager to give only one truck viz., No. BYX 1593 to the respondent. He talks of the truck No. 1588 and not of the truck No. 1558, which, according to the petitioner's allegation, was used to convey voters. The permit applied for was in respect of truck No. 1558 and not truck No. 1588. Ex. 600 only says that voters went on foot to vote. We rely on the evidence of Ex. 357 who is a woman, because there is hardly any cross-examination of this witness. Rajesab, referred to by her in her evidence, though cited by the respondent, has not been examined. This woman and Rajesab lived in the same compound.

111. In his written statement the respondent has admitted that he had procured some trucks on the date of poll and that he had procured them for conveying his workers and volunteers. But we do not accept his case that he had procured trucks only for conveying his workers and volunteers.

112. After carefully scrutinising the voluminous evidence led on behalf of both sides and carefully considering the arguments of the learned lawyers for both sides, we are satisfied beyond any doubt that the respondent himself procured several trucks including those referred to in the petition for conveying voters to and from the polling stations referred to in the petition and we are also satisfied that they were used under his instructions.

113. There is no doubt from the admissions made by the respondent himself that it was the respondent himself who had applied to the Regional Transport Officer for permits for the 14 trucks. Therefore we have no hesitation that the respondent committed the major practice of procuring motor trucks Nos. BYX 1878 and 1688 for the conveyance of electors (other than the candidate himself, the members of his family or his agent) to and from the polling stations of Hebli and Govankop.

114. Section 123(6) of the Act reads thus:—

"The hiring or procuring, whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person with the connivance of a candidate or his agent for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll."

115. An interesting question that arises on the wording is whether the words 'his agent' includes only the election agent and polling agent or whether the expression covers what the respondent calls workers and volunteers.

116. But in view of the finding already arrived at that the respondent is guilty of a corrupt practice in respect of electors, it is not necessary to give a finding whether the respondent is also guilty of this corrupt practice in respect of the workers and volunteers who, according to the respondent, were conveyed in the trucks.

117. The next question is whether the result of the election has been materially affected by the corrupt practice of procuring motor trucks to convey electors to and from polling stations.

118. Section 100(2) of the Act reads as follows:—

“Subject to the provisions of sub-section (3) if the Tribunal is of opinion—

- (a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or
- (b) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or
- (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election or by any mistake in the use of any prescribed form

the Tribunal shall declare the election of the returned candidate to be void.

119. In sub-section (b) the expression “materially affected” has not been used.”

120. But sub-section (2) is governed by sub-section (3) which reads as follows:—

“If in the opinion of the Tribunal a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice specified in section 123, but the Tribunal is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders and without the sanction or connivance of the candidate or his election agent;
- (b) that all such corrupt practices were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election;
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt or illegal practices at the election; and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate or any of his agents

then the Tribunal may decide that the election of the returned candidate is not void.

121. This sub-section applies only when the corrupt practice has been committed not by the candidate or his election agent but only when it is committed by an agent other than his election agent.

122. We hold that this major corrupt practice was not committed contrary to the orders of the respondent and also that it is not of a trivial or limited character and that the respondent did not take reasonable means for preventing the commission of the corrupt practice.

123. In fact, our finding is that the respondent has himself committed the major corrupt practice of procuring motor trucks to convey electors to and from polling stations. Under section 100(2) of the Act it is not necessary that the corrupt practice should have materially affected the election.

124. But, we feel that the result of the election has been materially affected. The total number of voters in the constituency is about 54,000. The respondent polled 15,000 votes and the petitioner polled 13,000 votes. If about 1,000 voters had voted for the petitioner the result of the election would have been reversed. We, therefore, hold that the result of the election has been materially affected by the commission of this major corrupt practice by the respondent.

125. In regard to the allegation of bribery, it is the case of the petitioner that tea was provided to voters at Vanhalli and parched rice and jaggery at Hebli. We have already believed the petitioner's witnesses of Vanhalli and Hebli on the point of the use of trucks and for the same reasons we accept their evidence regarding the provision of tea and parched rice to voters. On this point we are fortified in the conclusion that there was treating at Hebli by the voucher for

Rs. 32 attached to the return. It shows that this was in respect of tea etc. provided at the Hebli polling station. At Hebli polling station there were only a few polling agents for the respondent and it is very unlikely that Rs. 32 were spent merely on the meals and refreshments of the polling agents. It is clear on the evidence of Khalandar that this was all done with his connivance, because he has admitted that he had spent Rs. 32 for tea etc. at Hebli on 3rd January 1952 and that he had in all to spend Rs. 256-3-0 for tea etc. on 3rd January 1952. We, therefore, hold that there was bribery at Hebli polling station and that this provision of tea etc. was made with the connivance of Khalandar who was the manager of the respondent and who for all practical purposes was the election agent of the respondent. As there is no allegation of bribery at any other place, we hold that bribery had not extensively prevailed and the case therefore is outside the purview of section 100(1)(a). But section 100(2)(b) applies to this case and the election of the returned candidate *viz.*, the respondent will have to be declared as void.

126. It is contended that the nomination paper of the respondent was improperly accepted by the Returning Officer and that on this account the result of the election was materially affected. The ground urged is that in column 8 of the nomination paper which refers to the serial number of the candidate in the electoral roll of the constituency in which his name is included the respondent has not stated the description of the part of the electoral roll in which his name is included. It is pointed out that the instruction given in Note (6) of the nomination paper requires that where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors entered in each part, a description of the part in which the name of the person concerned is entered must also be given in items Nos. 8, 10 and 14. The form of the nomination paper is contained in Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

127. The electoral roll shows, that it is divided into four parts *viz.*, Parts A, B, C and D, Part A being the original voters' list, Part B being the supplementary voters' list, Part C being the Armed Forces (Special) voters' list and Part D being the newly added and amended voters' list.

128. It is also contended that the same defect appears in columns 8, 10 and 14 in all the 9 nomination papers filed by the respondent. This is conceded by the pleaders for the respondent. We uphold this contention for the following reasons: Rule 4 of the Representation of the People Rules, 1951, provides that every nomination paper delivered under sub-section (1) of section 33 shall be completed in the form specified in Schedule II. Section 33 of the Act provides that a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons, proposer and seconder, shall be delivered to the Returning Officer at proper time. Section 30 which refers to scrutiny of nomination papers provides that the Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may either on the objection or on his own motion refuse any nomination on five grounds and one of the grounds is that there has been any failure to comply with any of the provisions of section 33 or section 34. Section 33, as already mentioned, provides that the nomination paper should be completed in the prescribed form which is to be found in Schedule II of the Rules.

129. It is conceded by the pleaders for the respondent that the instructions given in Note (6) of the nomination paper have not been complied with in any of the 9 nomination papers. We, therefore, hold that the nomination paper of the respondent was not completed in the prescribed form and that therefore the Returning Officer had accepted it improperly.

130. Under section 100(1)(c) an election is to be declared to be void if the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper.

131. In the case of an improper rejection of nomination paper there may be two cases: (1) improper rejection of nomination paper of the petitioner himself and (2) improper rejection of the nomination paper of a third candidate, the petitioner complaining that, if the nomination paper of that third person had been accepted, some of the votes of the returned candidate might have been diverted to that third candidate and that in those circumstances the petitioner might have got the largest number of votes. But that would be a hypothetical question and the burden would be on the petitioner to show what he contends for.

132. But in this case we have a case of improper acceptance of the nomination paper of the returned candidate. If the nomination of the respondent had not been accepted, naturally he would not have been a contesting candidate at the

election at all and he would not have been returned as an elected candidate. But because of the improper acceptance of his nomination paper he has been declared as duly elected at the election. It is therefore clear that by the improper acceptance of the nomination paper of the respondent the result of the election has been materially affected.

133. In fact the law is that even if the nomination paper of a third candidate had been improperly accepted, that would be sufficient to materially affect the result of the election.

134. If the improper acceptance of the nomination was of a third person, that is a person who was not returned as duly elected, the question whether the improper acceptance of his nomination had materially affected the result of the election might be difficult to decide. But, when the improper acceptance of the nomination paper is that of the returned candidate, there can be no doubt that the result of the election is materially affected by the improper acceptance. We therefore hold that the election should be declared as void because of the improper acceptance of the nomination paper of the respondent.

135. It is next contended that the respondent made use of a photo of Mahatma Gandhi and his pictures in connection with his election propaganda and evidence is led of the following witnesses:—Exs. 254, 256, 257, 260, 303, 304, 305, 309, 310, 311, 329, 332, 347, 348, 349, 354, 339 to 343. It is alleged that Mahatma Gandhi's photo was displayed on a board hung in front of the election office in the building of the respondent. According to the respondent, this office was run by the District Congress Committee and the Taluka Congress Committee, while according to the petitioner, it was run by the respondent himself. It is also the case of the petitioner that, when a bullock-procession was taken out in Dharwar city, there was a band and a cart was taken in front with the photos of Mahatma Gandhi and Pandit Jawaharlal Nehru. It is not contended by the petitioner that the photo or picture of Pandit Nehru is a national symbol, but it is contended that the photo of Mahatma Gandhi is a national symbol. The learned pleaders for the respondent contest this and dispute the fact that Mahatma Gandhi's photo or his picture is a national symbol.

136. Section 124(5) of the Act refers to an appeal to religious and national symbols such as the national flag and the national emblem for the furtherance of the prospects of a candidate's election. It is clear, therefore, that in the opinion of the Legislature the national flag and the national emblem are not the only two national symbols. This is clear from the use of the words "such as". It is therefore clear that the national flag and the national emblem are mentioned by the Legislature only as illustrations of the national symbols.

137. The birth-day of Mahatma Gandhi is observed as a national holiday or a public holiday under the Negotiable Instruments Act and the picture of Mahatma Gandhi is hung in all the Government offices at Government cost. In our opinion, therefore, the photo of Mahatma Gandhi is a national symbol.

138. The photos on the building of the respondent where his election office was situate have been taken and it is admitted by the respondent in his evidence that these are the photographs of his building. They are Exs. 342 and 343. In his evidence, the respondent at first stated that there was a board with Mahatma Gandhi's picture hung upon his building. A little later he has added that he did not remember if there was a board hung upon his building. But this is clear from the two photographs (Exs. 342 and 343).

139. After a careful scrutiny of evidence, we hold that the respondent did use the pictures of Mahatma Gandhi for the furtherance of his prospects as a candidate at the election.

140. In our opinion, the word "systematic" does not govern the second part of sub-section (5) of section 124 of the Act, which reads thus:—

"The systematic appeal to vote or refrain from voting on grounds of caste, race, community, or religion or the use of, or appeal to, religious and national symbols such as the national flag and the national emblem, for the furtherance of the prospects of a candidate's election."

141. In our opinion, an appeal to vote or refrain from voting on the ground of caste, race, community or religion must be systematic. But an appeal to religious or national symbols need not be systematic. It may be noted that the particular picture selected was that of a bust of Mahatma Gandhi with folded hands and the evidence is that on the same board on which this picture was put up were the word "Vote for Dasankop" making it appear that Mahatma Gandhi was himself appealing with folded hands to vote for the respondent. We, therefore, hold that the respondent did commit the minor corrupt practice of appealing to a national symbol for canvassing support for his election.

142. As regards the allegation that there was an appeal on the ground of religion and that religious symbols were used, we hold that there was no systematic appeal on the ground of religion.

143. It is the allegation of the petitioner that a bullock in this part of the country is known as "Basavanna", a deity worshipped by Lingayats and a bullock is, therefore, a religious symbol. According to him, the respondent, therefore, made an appeal to religious symbols within the meaning of section 124, sub-section (5) which reads as follows:—

"The systematic appeal to vote or refrain from voting on the grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election."

144. In his written statement (Ex. 60) the respondent has stated as follows:—

"This opponent did never appeal by way of any religious symbol like a bull or Basavanna that is alleged to be worshipped by the Lingayat community. Basavanna or bull is worshipped not only by the Lingayat community, but by other communities as well. Two yoked bullocks allotted to the Congress party as symbol are not a bull or Basavanna or Nandi to constitute a religious symbol."

145. It is, therefore, admitted by the respondent himself that Basavanna or bull is worshipped not only by the Lingayat community but by other communities as well.

146. Govardhanrao, the Prachar Secretary of the Karnatak Pradesh Congress Committee and the District Congress Committee, who, according to the respondent, had run the election office in the building of the respondent, in his article in the "Navayuga" dated 27th January 1951 (Ex. 786) stated as follows:—

"Speeches that are made by the leaders of our nation, that "India lives in the villages" are proper. More than 75 per cent. of the Indian population lives in villages. Agriculture is the main occupation of the Indians. The animal which is seen and loved by every body in the villages, is a bullock. It is looked upon dearly by our people as 'Nandi' of God Ishwara, Basavanna. Bullocks are the strong treasures of our agriculturists and souls of agriculture."

147. It is true that in this Article, Govardhanrao emphasizes the Congress symbol representing bullocks, which are so important to agriculturists and villagers. But the question is whether in addition to making other appeals he also made an appeal to religious symbol. Ex. 623, who was examined as a witness for the respondent, has himself stated that Basavanna is his family deity. His deposition on this point is as follows:—

"I can read and write. I do not know who were standing as candidates for the Assembly election. There was Basavanna's symbol on the card. I voted for the candidate whose symbol was Basavanna."

Question.—Who told you to vote for the candidate whose symbol is Basavanna?

Answer.—Basavanna is my family deity. I am a ryot and if we do not vote for Basavanna, for whom shall we vote?"

148. In the case of religion, there must be a systematic appeal, but in the case of a religious symbol there need not be a systematic appeal. But the actual symbol allotted by the Election Commission is a pair of yoked bullocks. It is not a picture of Basavanna. We, therefore, hold that there is no appeal to religious symbol. But we do hold that there was appeal to religion. Basavanna is a religious deity and the very fact that the word "Basavanna" was used during the course of the election shows that an appeal was made to religion. Ordinarily bullocks are known as "Yettu", but when a bullock is referred to as an object of worship, it is referred to as "Basavanna". But, although we hold that there was an appeal to religion, we hold that there was no systematic appeal, because the evidence on this point is scanty.

149. As regards the allegation that Sheshgriagouda Patil was the officiating Patil of Vanhalli and had worked for the respondent, we are inclined to believe that Sheshgriagouda Patil worked for the respondent, but there is no satisfactory evidence to show that he was the officiating Patil at the time of the election. There is only one document, which is relied on by the petitioner and that is an extract from

the Palee Register maintained under the Watan Act. It only shows that Sheshagrigouda Patil is the Vatandar Patil but it does not show that he was officiating at the time of the election. If he was really officiating that could have been proved by examining the Mamlatdar or the Circle Inspector or even the Talati of the village. As this was not done, we hold that this allegation has not been proved.

150. Regarding the allegation of undue influence and threats said to have been made by Abdul Rahaman Sayyadsah Javali in the mosque in Dharwar city on Fridays, we have carefully considered the evidence and we hold that the petitioner has failed to prove his allegation beyond reasonable doubt.

151. The same remark can be made in regard to the allegation of personation in Dharwar city. We also hold that this allegation is not proved beyond reasonable doubt, because at the back of the complaint the Presiding Officer Kattishettar had made an endorsement that the two persons who came to the polling station thought that they were voters and that when it was found that they were not voters they went away.

152. The identity slips said to have been issued to these two persons have not been produced. Neither the alleged personators nor the persons who were attempted to be personated are examined. There is some suspicion attaching to the movements and conduct of Ghodesavar and Naikwadi—the two polling agents of the respondent—when a complaint was made by Sangolli the relieving polling agent of the petitioner. All things considered, we are not inclined to hold this allegation proved beyond reasonable doubt.

153. As regards the allegation of personation, in Ward No. 5, it is the allegation of the petitioner that two persons came and applied for ballot papers, when they were not voters, in the names of others and reliance is placed on the evidence of Exs. 155, 230, 231, 232, 320, 321, 326, 402 and 414 in support of this allegation and also two photographs (Exs. 327 and 328).

154. After careful consideration of the evidence, we are satisfied that it is not proved beyond reasonable doubt that there has been an attempt to procure ballot papers by those persons with the connivance of the candidate or his agent. We, therefore, hold that this allegation is not proved.

155. It is also contended that the accounting of ballot papers shows that there were 42 papers in excess when the ballot papers were returned to the Returning Officer by the Presiding Officer of the polling station in Ward No. 8 in Dharwar. This is certainly so stated in Ex. 436 which is a report of the Returning Officer who counted the ballot papers and who went into the account of the ballot papers before he counted the ballot papers. It is contended that this is non-compliance with the rules and that it falls under section 100(2)(c) which provides that the election of the returned candidate may be declared to be void if the result of the election has been materially affected by any non-compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under the Act.

156. In our opinion, there is no non-compliance with the Rules by any of the officers who were in charge of the elections. There is nothing to show how 42 papers were found to be in excess and it is not shown that this defect or irregularity was due to non-compliance with the Rules by any of the officers of the election. In any case we hold that the result of the election has not been materially affected by the finding of 42 ballot papers in excess, because the difference between the successful candidate and the next candidate is 2,000 votes. We, therefore, hold against the petitioner on this point.

157. The evidence led by the petitioner is that Shivaputrappa Pujari of Dharwar was a Pujari at the temple of Ulavi Basaveshwar and he gave threats to the voters of Dharwar that he would beat any one who did not vote for the respondent. No person to whom such threats are alleged to have been given is examined. The evidence shows that Shivaputrappa is a discharged soldier and he was moving about in a drunken state. We hold that the allegation is not satisfactorily established.

158. In his arguments Mr. Shah for the respondent contended that the verification of the petition and the list of particulars are both defective and he relies on Order 6, Rule 15 of the Civil Procedure Code and *State of Bombay v. Purushottam Jog Naik* (54 Bom. L.R. 869 at page 875), a decision of the Supreme Court.

159. No doubt the verification should show what paras. are true to the knowledge of the petitioner and what paras. are true to his information and belief. The verification merely states that the petition is true to the knowledge, information and belief of the petitioner. This is no doubt not a compliance with the strict

requirements of verification, but in this particular case we hold that it is a mere irregularity which does not affect the petition. The case in *State of Bombay v. Purushottam* (54 Bom. L.R. 869) is of a different kind where the whole decision rested on whether or not the facts stated in the affidavit were or were not true to the knowledge of the Secretary to the Government, who had filed the affidavit. That was a case where a detention order passed by the Government had been challenged. If some of the facts stated in the affidavit of the Secretary were not true to his knowledge but only based on his information and belief, the detention order was liable to be set aside. It was essential to the confirmation of the detention order to show that certain facts stated in the affidavit were true to the knowledge of the Secretary and that they were not based on information and belief.

160. But in this election petition the matter is entirely different. Even if all the facts alleged in the petition are based purely on information and not on personal knowledge it would not affect the maintainability of the petition.

161. It is only in the case of affidavits that the matter should be within the personal knowledge because affidavits are evidence (*vide* Order 19 of the Civil Procedure Code). But in the case of a plaint, matters based on information and belief can also be included because a plaint or election petition is not itself evidence and the allegations in it have to be proved by proper evidence (*vide* Order 6, Rule 2, C.P.C.).

162. Where a verification does not clearly show which facts are true to the knowledge and which facts true to information and belief, it will be presumed that all the facts are based on information and belief only. Even on this basis, the election petition is maintainable and not vitiated. We, therefore, hold that there is no force in the contention of Mr. Shah that the verification is defective and that, therefore, the petition is not maintainable.

163. It is next contended that the sources of information must be stated in the petition and reliance is placed on *Padmabati Dast v. Rasik Lal Dhar* (I.L.R. 37 Calcutta 259). That was a case where the question was whether or not to grant an interim prayer. A contrary view was taken in *Ramgopal Ghose v. Dharendra Nath Sen* (I.L.R. 54 Calcutta 380). In our opinion, it is not necessary in an election petition to state the sources of information of the facts alleged in it. The sources of information are not material particulars required in section 83 of the Act. Even under the Civil Procedure Code source of information need not be given in a plaint but only in interlocutory matters decided by affidavits (See Order 6 rule 2 and Order 19 rule 3).

164. It is next contended that the petition is out of time as an amendment of the list of particulars was allowed in September 1952. The last date for filing the election petition was 3rd April 1952 and it was filed before that date. The petition is required to contain a list of particulars. Simply because the list of particulars was allowed to be amended in September 1952 that does not make the petition one filed in September 1952. The petition was filed in March 1952 and whatever may have happened subsequent to the date of filing of the petition does not undergo a change. We, therefore, reject this contention of Mr. Shah.

165. It is next contended by Mr. Shah that an election petition is a quasi-criminal matter and that the standard of proof is the same as in criminal cases. While we agree that an election inquiry is quasi-criminal, we do not in theory agree with his general proposition, although in practice we are inclined to appreciate the evidence with the same care as in criminal matters. We may here refer to the following observations of Halsbury in para 580 at page 286 in "the Laws of England", Volume XII—on Elections:—

"Due proof of a single act of bribery by the candidate or his agents, however insignificant that act may be, is sufficient to invalidate the election. The judges are not at liberty to weigh its importance nor can they allow any excuse, whatever, the circumstances may be, such as they can allow in certain conditions in cases of treating or undue influence by agents. For this reason clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive. Bribery, however, may be implied from the circumstances of the case and the court is not bound by the strict practice applicable to criminal cases but may act on the uncorroborated testimony of an accomplice. The court strips the proceeding in each case of every colour, every dress and every shape to discover its real and true nature."

166. An election inquiry, though quasi-criminal in nature, allows the respondent to be examined and cross-examined on oath and while deciding whether the allegations of the petitioner are proved beyond reasonable doubt or not the evidence of the respondent on oath must also be considered. Having said this, we wish to state clearly that we have applied the principle of proof beyond reasonable doubt in appreciating the evidence and coming to our findings.

167. It is next contended that the requisite particulars have not been given in the petition and that, therefore, the petition must be dismissed under section 90 (4) which reads thus:—

“Notwithstanding anything contained in section 83 the Tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117.”

168. Section 83 requires a list of particulars to be attached to the petition containing particulars of each corrupt or illegal practice. It is contended by Mr. Shah that each single instance of a corrupt practice is a substantive charge and that particulars must be given of every instance of corrupt practice and that the names of all the persons said to have been threatened and said to have been treated with tea and parched rice should have been given.

169. Although technically the giving of four cups of tea to four different persons at the same time and place may be four different practices, it would also be a single practice, if it amounts to a single transaction or if it can be treated as one act.

170. It is sufficient if we see whether the allegations in the petition regarding these corrupt practices, which are held to be proved, suffer from the defect of want of requisite particulars.

171. In our opinion, sufficient particulars of those corrupt practices have been given (*vide* paras. 11 to 15 of our judgment) and there is no force in the contention of Mr. Shah.

172. Under section 83 of the Act, the list of particulars should contain (1) full particulars of any corrupt or illegal practice alleged by the petitioner, (2) as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and (3) the date and place of the commission of each such practice.

173. Under section 124 of the Act, it is a corrupt practice to make a return of election expenses which is false in any material particular.

174. When such a minor corrupt practice is alleged, the question is what particulars are required to be stated under section 83 of the Act.

175. In the case of a return of election expenses which is false, the corrupt practice is the date of making the return. If, for instance, Rs. 1,000 are spent on petrol and only Rs. 100 are shown, the spending of Rs. 1,000 on petrol is not a corrupt practice. It would be perfectly legitimate to do so. But what is a corrupt practice is the filing of a false return. The date and place required under section 83, is, therefore, the date and place of incurring of expenditure of any item of the return. If a return is filed which is false in regard to various items of expenditure, it is not necessary therefore to state the dates and places of expenditure of various items. The material particulars referred to in section 83 are quite different from material particulars referred to in section 124(4). The material particulars referred to in section 83 are material particulars of the commission of a corrupt practice, whereas the material particulars referred to in section 124 (4) are the material particulars of expenditure which may be perfectly legitimate items of expenditure. There may be several false items of different dates but the offence is only one, namely the filing of a false return.

176. Thus, if Rs. 400 are spent on the 4th of December but only Rs. 40 are shown in the return and Rs. 700 are spent on the 7th of December but only Rs. 70 are shown in the return, the result is not two corrupt practices but only one corrupt practice.

177. We are, therefore, of the opinion that in the case of the corrupt practice of filing a false return of election expenses, it is not necessary to state in the petition anything more than the particulars of the corrupt practice and that it is not necessary to state the items of the return which are alleged to be false. That would be a matter of evidence and particulars of evidence need not be given in an election petition as in the case of suits.

178. For instance, Form 8 in Appendix A to the Civil Procedure Code shows that when a suit is filed for materials furnished and not paid for, it is not necessary for the plaintiff to state in his plaint what materials he had supplied and on what dates.

179. Similarly in the case of a corrupt practice of procuring motor trucks, for conveying electors to and from polling stations, it is sufficient in an election petition to state the date of procuring the motor trucks and the motor trucks procured but it is not necessary to state at what polling stations electors had been conveyed. This is because the corrupt practice defined in section 123(6) is the procuring of trucks and not the conveying of electors.

180. Moreover, in this case, it is admitted by the respondent that he had applied to the Regional Transport Officer for permits for 14 trucks in respect of which he had made 14 applications containing the numbers of the trucks, the names and signatures of the respective owners. These are, therefore, within the knowledge of the respondent. In fact, in the original petition the petitioner had stated that several trucks were used including trucks bearing numbers 1878, 1688 and 3225. The petitioner was allowed to amend his petition by adding the numbers of three more trucks, namely 1588, 2597 and 4130.

181. When applications for all the 14 trucks were sent at one and the same time, the procuring of all the 14 trucks would be but one corrupt practice, although technically the transaction can be split up into 14 corrupt practices.

182. The petitioner must give full particulars of any corrupt or illegal practice alleged by him in the petition. If he alleges a corrupt practice in the petition but does not give full particulars that are required by section 83, it is open to the opponent to make a request to the petitioner to be furnished with full particulars as mentioned in section 83. Such an order can also be passed by the Court *suo moto*.

183. If no such further particulars are called for, then it is open to the opponent to ask that the particular allegations in the petition be struck off.

184. The object of section 83 requiring particulars is that the petitioner should not spring a surprise on the opponent by leading evidence of corrupt practices of which he has not given particulars as required by section 83.

185. If the petitioner does not give particulars required of any corrupt or illegal practice alleged by him in the petition, then he cannot lead evidence. It is not clear from the Act whether the Act contemplates any other consequences for failure to furnish the particulars required of a corrupt or illegal practice.

186. Even if the petitioner is not allowed to lead evidence on the ground that he has not furnished the particulars required, still it may be open to him to put questions by way of cross-examination of witnesses of the opponent, because that would not be leading evidence.

187. It would also be open to the Tribunal to give a finding that the opponent has committed a corrupt practice or an illegal practice, if there is sufficient material for such a finding.

188. Even if a petitioner has not been allowed to lead evidence himself, for instance, such materials may be available in the admissions made or an admission found in the documentary evidence led by an opponent.

189. For instance, the petitioner cannot allege in his petition that the opponent has not kept separate and regular accounts, because whether the opponent has kept separate and regular accounts can only be seen after the trial begins and after the accounts are actually produced. But, if it is elicited in the cross-examination of the opponent that he has not kept separate and regular accounts, that does not prevent the Tribunal from giving a finding on this point, notwithstanding the fact that the petitioner has made no allegation in his petition that separate and regular accounts had not been kept by the opponent.

190. If, however, no particulars are given of any corrupt or illegal practice, then the petition may be dismissed under section 90(4) of the Act.

191. But, if the petition is heard, then it is the duty of the Election Tribunal to consider the whole evidence including the admissions made by the respondent in cross-examination.

192. It is admitted by the respondent himself that he had paid Rs. 2,000 to the Karnatak Pradesh Congress Committee. This item has been shown in the return of expenses. As the expense is shown in the return, there is no question of falsity in the return of expenses as to this item.

193. We have already held that the respondent has filed a return of election expenses which is false in material particulars. In addition, the respondent is guilty of the corrupt practice of verifying a return which was false in material particulars.

194. As regards processions of bullocks decked and decorated and marched with ritualistic music as on religious occasions, we accept the evidence led by the petitioner that two such processions were taken out and that some bullocks and articles necessary for that purpose had been procured by the agents of the respondent. We have already taken the view that bullocks themselves are not religious symbols, although an appeal to Basavanna or an appeal to Nandi would be an appeal to religion. As we have already held that bullocks are not themselves religious symbols, it would not be wrong to take out a procession of bullocks in whatever way decorated. We, therefore, hold that the taking out of a procession of bullocks would not amount to a corrupt practice.

195. We are satisfied that various persons assisted the respondent at various places in the matter of conveying electors and treating some voters. But we are not prepared to hold that this was done by persons who had been appointed as agents.

196. For all the above reasons we pass the following orders:—

197. *Order under section 98 of the Act.*—(1) The election of respondent Dasankop Hasansab Maktumsab is declared void.

(2) The election held on 3rd January, 1952, at the Dharwar constituency is declared void.

198. We find that respondent Dasankop Hasansab Maktumsab has been proved to have committed the corrupt practice under section 124 (4) of filing a return of election expenses which is false in material particulars and verifying such return. We also find that respondent No. 1 Dasankop Hasansab Maktumsab has been proved to have committed the major corrupt practice of bribery, that is to say, offer of gratification to electors to vote at the election [Section 123 (1) (b)]. We find that he has committed the corrupt practice also of procuring vehicles for the conveyance of electors (other than the candidate himself, members of his family or his agents) to and from polling stations in Dharwar constituency under section 25 [Corrupt practice under section 123 (6)]. We also find that he has committed the minor corrupt practice of using the national symbol of pictures of Mahatma Gandhi for the furtherance of the prospects of his election [Section 124 (5)].

199. As regards costs, having regard to the length of the trial, the number of lawyers engaged on both the sides, the number of witnesses examined and the complexity of the issues, we order respondent No. 1 Dasankop Hasansab Maktumsab to pay Rs. 3,000/- (Rupees Three Thousand) to the petitioner as his costs. The respondents shall bear their own costs.

The 24th February, 1953.

(Sd.) S. B. JATHER,

(Sd.) G. N. KATRE,

(Sd.) V. B. RAJU,

Election Tribunal.

[No. 19/82/52-Elec.III]

S.R.O. 459.—WHEREAS the election of Shri Des Raj, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Budhlada Baretta Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951, by Shri Narotam Singh, B.A., L.L.B., son of Shri Chattar Singh, Village Chakkan, Police Station Budhlada District Bhatinda;

AND WHEREAS, the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL BARNALA (AT PATIALA)

ELECTION PETITION No. 186 of 1952

BARETA-BADLADHA CONSTITUENCY OF THE PATIALA AND EAST PUNJAB STATES UNION
LEGISLATIVE ASSEMBLY

CORAM

Shri Jagjit Singh, M.A., LL.B.—*Chairman.*
Shri Sheo Gopal Mathur, B.A., LL.B. and
Shri Dalip Singh Jain, M.A., LL.B.—*Members.*
Shri Narotam Singh—*Petitioner.*

Versus.

Shri Des Raj and others.—*Respondents.*

PRESENT:—

Shri Munni Lal Kalia counsel for Shri Narotam Singh petitioner.
Shri Om Parkash Singla counsel for Shri Des Raj respondent No. 1.

JUDGMENT (PER SHRI S. G. MATHUR, MEMBER)

Shri Narotam Singh has challenged the validity of the election of Shri Des Raj the respondent No. 1 to a seat in the Bareta-Badladha Constituency of the Patiala and East Punjab States Union Legislative Assembly in the general elections held during the year 1952, by this petition presented under section 81 of the Representation of the People Act, 1951. He asserted for himself a right to file the petition by virtue of his being an elector in the electoral roll of village Chakkan in the Bareta-Badladha Constituency, in District Bhatinda, and also as being duly nominated candidate for the said Constituency. He had filed two nomination papers (Exs. P. 1 and P. 2) bearing the serial Nos. 261 and 262, both of which were rejected by the Returning Officer at the time of scrutiny, Ex: P. 1 on objections taken against it on behalf of the respondent No. 1, and Ex: P. 2 by him of his own accord. The nomination paper serial No. 261 was rejected on the ground of the total omission of the name of the proposer in column No. 9 of it, and the nomination paper serial No. 262 for the reason that the thumb marks of the proposer and the seconder, which were put on it by way of signature by them, were not attested by the Returning Officer, as required by Rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

The petitioner contends that the orders for rejection on both the nomination papers were quite improper and illegal and had materially affected the result of the election and he prayed that the election for Bareta-Badladha Constituency seat be held to be wholly void and a fresh election be ordered for the aforesaid seat.

The respondent No. 1 admitted the petitioner to be an elector in the Bareta-Badladha Constituency, but contended that as his (the petitioner's) name appeared as an elector in the electoral roll for Hissar (Punjab State) Constituency, from before, he was disqualified for enrolment as an elector in any constituency in the Patiala and East Punjab States Union, and could not be deemed competent to seek election for the said constituency, and further urged that the orders passed by the Returning Officer rejecting the nomination papers of the petitioner, serial Nos. 261 and 262, which were incomplete, were quite sound and effective.

None of the other respondents (Nos. 2 to 10) put an appearance in the case and the proceedings against them were recorded *ex parte*. The respondent No. 8, namely S. Mohinder Singh, was one who had filed a nomination paper but subsequently withdrew it, while the respondents Nos. 9 and 10 seemed to have no interest left in the election after their nomination papers had been rejected on scrutiny. The other respondents Nos. 2 to 7, though they had contested the elections, have not cared to take any interest after losing the seat.

The facts given in the petition and the written statement of the respondent No. 1 have given rise to the following issues:—

- (1) Whether the nomination paper No. 261 of the petitioner was improperly rejected by the Returning Officer?
- (2) Whether the nomination paper No. 262 of the petitioner was improperly rejected by the Returning Officer?

- (3) Has the result of the election not been materially affected if issue No. 1 or No. 2 is decided in favour of the petitioner?
- (4) Was the petitioner already entered as an elector in Hissar (Punjab State) and as such was disqualified for enrolment as an elector in Bareta-Badladha Constituency or any other constituency in the Patiala and East Punjab States Union and, therefore, could not be a valid candidate for election in Bareta-Badladha Constituency?
- (5) Whether the election for the seat in the Patiala and East Punjab States Union Legislative Assembly for the Bareta-Badladha Constituency should be declared to be wholly void to what other relief the petitioner is entitled?

FINDINGS

Issue No. 1.—The nomination paper Ex: P. 1, serial No. 261, omits to mention the name of the proposer against the column No. 9 which is intended for it, and the Returning Officer, on scrutiny, found the said omission to be a substantial non-compliance of the provisions of section 33 of the Representation of the People Act, 1951, and passed an order of rejection on it under section 36 (2) (d) of the said Act. It is contended on behalf of the petitioner that the entry in column No. 10 indicating the serial number of the proposer in the electoral roll of the constituency, and the signature of the proposer as put down in column No. 12, provided a substantial compliance of section 33. Further he urged that if it was a mistake, it was a mere clerical error, which the Returning Officer at the time of the presentation of the nomination paper should have got corrected by the petitioner, and that even if it was treated to be a technical defect, it was not of a substantial character and should not have been treated as fatal for purposes of election. On the other hand the respondent No. 1 urged that the name of the proposer was a material particular in the preparation of a nomination paper, and could in no way be treated as a mere clerical error, or a trivial defect of an unsubstantial character.

The omission of the name of the proposer is evident from the nomination paper itself and the chiefs point for consideration is whether a nomination paper, without the entry of the name of the proposer being completed on it, could be accepted as a valid paper, to allow the candidate to proceed with his election campaign.

Sections 33, 35 and 36 of the Act and Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, are the relevant provisions in the law for consideration of the points of the presentation of a nomination paper and the requirements for a valid nomination. Section 33(1) provides that on or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon, deliver to the Returning Officer, at the place specified in this behalf in the notice issued under section 31, a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder. Sub-section (5) of section 33 further says that on the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls, laying down further that the Returning Officer may permit any clerical error to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, and, where necessary, direct that any clerical or printing error in the said entries shall be overlooked. Section 35 requires the Returning Officer to have a notice, of the nomination paper, to be affixed in some conspicuous place in the office, fixing the time and place for scrutiny as well, and Section 36 provides that the Returning Officer shall examine the nomination papers on the date fixed for scrutiny and he shall decide all objections which may be made to any nomination, and may, either on such objection or on his motion, after such summary inquiry, if any as he thinks necessary, refuse any nomination on any of the grounds given in clauses (a), (b), (c), (d) and (e) of sub-section (2) of Section 36. Clause (d) out of these clauses, enables the Returning Officer to refuse the nomination if there has been any failure with any of the provisions of section 33 or 34. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, further emphasises that every nomination paper delivered under sub-section (1) of section 33 shall be completed in the form specified in Schedule II, and the Schedule II intends to give the different items of the nomination paper, which are required to be completed by the petitioner, and it specifies the column No. 9 as the column for the name of the proposer.

These provisions require a candidate to see that the form of the nomination paper was completed with care in respect of the items mentioned in it, and the importance of the particular item of the names and electoral roll numbers of the candidate, proposer and the seconder is further emphasised by sub-section (5) of section 33. In view of it the Returning Officer has to pay particular attention to the names and electoral roll numbers of the candidate and his proposer and the seconder, for purposes of comparing them with the entries appearing for these names in the electoral rolls. Evidently if the column about the name of the proposer is left blank for any reason, nothing is left for the Returning Officer to compare it with the name as entered in the electoral roll of the constituency, as is required by sub-section (5) of Section 33. The law does not leave any option for the Returning Officer to raise a presumption of the name of the proposer in his mind by making a comparison of the electoral roll with other entries appearing in the nomination paper. It is specified that for purposes of comparison he has to look to the names as they are entered in the nomination paper. The words in sub-section (5) of section 33 are to the effect ".....the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls. He has thus to apply his attention towards the name as appeared from the nomination paper itself. It is not left for him to act on mere clues derived from other entries appearing in the nomination form to determine the actual names. The words "as entered in the nomination paper" in sub-section (5) definitely imply the intention of the legislature that the name must appear in the form itself and in its proper column.

The view pressed by the learned counsel for the petitioner that the omission was in the first instance a mere clerical error, which the Returning Officer ought to have got corrected at the time of the presentation of the paper, or at the most it was a mere technical defect of an unsubstantial character, which ought to have been condoned by him at the time of scrutiny, does not appear to be sound.

We do not consider that if an entire column is left blank it was an omission of the nature of a mere clerical error. Under section 33(5) (a) the Returning Officer could get a clerical error in the nomination paper, in regard to the names, to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls, but in the present case there was no entry at all which could be the subject of a correction. Clerical error means a mistake in some writing which has already been put down on paper, and if there appeared any inaccuracies or misdescription of an unobjectionable nature in it, the Returning Officer could get corrections made in order to bring the entries into conformity with those in the electoral roll. But the words "clerical error" cannot be extended to include the total omission of a particular entry. Had there been an entry about the name of the proposer in the nomination paper pre-existing, but incorrect in some respect, a correction could be made in it with the permission of the Returning Officer at the time the paper was presented, but no further. It was not reasonable to expect of him to extend his powers to permit the filling up of the blank items which had previously been omitted to be filled up. The word "error" may be extended to include such slight missing words in the sentences without which the sentences would not look intelligible, but to apply the word to cover total omissions of the entries would be stretching the meaning of the word "error" too far. The giving of an inaccurate name could possibly be cured by corrections, but the total omission of the name could not be treated as a mere matter of form. It was a statutory requirement and the name should have found a place in the appropriate column.

Even if the contended omission be deemed to be a mere clerical error within the meaning of section 33(5) of the Representation of the People Act, 1951, and it had passed unnoticed by the Returning Officer, it would not absolve the petitioner from the duty which lay upon him to present the nomination paper complete in full in the form prescribed for it, as was observed in *Gondia General Rural Constituency case*, reported in *Sen and Podder Indian Election Cases* page 326 at page 327. As is observed in it, the rule simply requires the Returning Officer to point out only such discrepancies as come to his notice and was probably inserted in order to give a candidate an opportunity to correct the errors which come to light at the time of presenting the nomination paper. As is discussed in the *Government of India Gazette Extraordinary* No. 172, dated the 18th December, 1952, page 991 at page 994, while discussing the functions of the Returning Officer, no controversial questions could be decided by him at the stage when the nomination paper was presented to him, nor could he permit any alterations in the entries in the nomination papers, which were not mere clerical errors. So to argue that a duty was cast on the Returning Officer in law to point out the mistakes in the nomination paper and to get correction done in respect of them and that if he had failed in it,

the candidate was not to suffer does not hold good. The duty for preparing the nomination paper in the prescribed form lay on the candidate himself primarily, and if he commits material irregularities in the preparation of it, he is to suffer the consequences thereof himself.

It goes without dispute that the defect of the omission of the entry regarding the name of the proposer is there, but it is urged that in view of the provisions of section 36(4) the nomination paper should not have been rejected by the Returning Officer, as the defect was not of a substantial character.

As has been discussed above the law has laid a particular importance for the entry of the name of the proposer in the nomination paper. It is the entry about the name, which the Returning Officer is required to look into, at the very first moment when the nomination paper is presented before him, as required by section 33(5). Omission of such an essential entry would leave a defect of high order in the paper, as it would not furnish material for the Returning Officer to discharge his function of making a comparison of the name of the proposer with the entry in the electoral roll.

It is urged by the learned counsel for the petitioner that the signature and the electoral roll number, as given in columns Nos. 10 and 12 of the nomination paper, were to furnish sufficient material to enable the Returning Officer to locate the name of the proposer. But evidently it was not for the Returning Officer to make conclusions about the name of the proposer by looking to the column provided for the signature of the proposer. It is the name that is the basic entry for purposes of comparison with the entry in the electoral roll, as is contemplated by Section 33(5). The Returning Officer is not to act on inferences drawn up in his mind for fixing names and making comparisons. He has to look for it to the nomination paper itself, but in the present case the name of the proposer as such does not appear in the form. The name should appear in the form independently of the signatures.

The contention chiefly turns to the point whether the nomination paper is complete in its prescribed form. The question whether the essential requirements for filling up a nomination paper are duly observed is one thing and the question about the identity of the candidate or the proposer or the seconder is quite another matter. The two positions are not to be confounded with each other. Here we are required to see whether due compliance for the preparation of the nomination paper is made or not. The point came up in discussion in Betul District case, as reported in Doabia's Election Cases, Volume I at page 211, in which it is observed that the question, whether the person, who claims to be the proposer or seconder, is or is not identical with the person whose description is given in the electoral roll against the number given by him in the nomination paper, is altogether a different one and ought not to be confounded with the question of what is necessary to be stated in the form. Further it says that obviously it is one thing to say that the form has not been duly filled in and quite another that the proposer or the seconder is not identical with the person, whose electoral number is stated in the form. Similar view is expressed in Indian Election Law of Sarin and Pandit at page 312. In the present case no question of the identity of the proposer has arisen. The only point for determination is whether the form prepared is complete in itself or not.

It is to be noted that at the time of the scrutiny the objection taken was not to question the identity of the proposer but was to the effect that the name of the proposer was missing from it. Shri Narotam Singh petitioner gave out in his statement that the counsel for Shri Des Raj and Shri Mukand Singh respondent had taken objections before the Returning Officer that column No. 9 was left blank and that the petitioner replied to it that the omission was not vital but was an ordinary matter. Shri Ralla Ram and Mulkh Raj (P.Ws. 5 and 7 respectively) have also endorsed that the objection raised was merely in respect of the omission appearing in column No. 9 of the form. The order passed by the Returning Officer also proceeds on the said objection and it is to the effect that the omission was a failure which amounted to substantial non-compliance of the provisions of section 33(1). In the present petition as well the plea raised is about the incomplete preparation of the form and not as regards the identity of the proposer. Thus it is to be kept in mind that the point is in respect of the form itself. The Returning Officer, on scrutiny, is required to satisfy himself not only about the eligibility or the identity of the candidate, the proposer and the seconder but also see that the form is fully completed. The two matters are distinct from each other. It may be that one or two items, on comparison with the electoral roll items, are sufficient to establish the identity but what the law requires is that the form should also be completed in its prescribed form.

Ex. P. 3 is the notice of nomination papers prepared in the office of the Returning Officer and the name of Amar Singh happens to be mentioned as the proposer against the entry of the nomination paper serial No. 261. With reference to the

said entry it is urged that the very appearance of the name of the proposer in the notice is indicative of the fact that the Returning Officer had satisfied himself about the name of the proposer after looking to the other entries of the nomination paper and making comparison of them with those contained in the electoral roll, and that in such a case it was quite immaterial if the particular entry about the name of the proposer, is left blank in the nomination paper, as the object of comparison was actually fulfilled otherwise. But if a stand was intended to be taken on the ground that the Returning Officer, before putting his signature on the notice form, had actually taken care of satisfying himself about this particular entry, it was necessary for the petitioner to put the Returning Officer himself into the witness-box, for it was he alone who could speak how his mind worked on the particular occasion when the entries in the statement in form No. 2 were prepared. It is to be noted that form No. 2- (Ex. P. 3) was prepared by office clerks, though under the supervision of the Returning Officer, but it cannot be taken for granted that for every item of this consolidated statement of nineteen nomination papers the Returning Officer himself had fully applied his mind for satisfying himself as regards the correctness of it. Besides, it cannot be lost sight of, that at the time, when the paper came before the Returning Officer for scrutiny, he at once noticed the omission, and formed an opinion that such an omission was of a substantial character and could not be ignored.

The total omission of a material entry cannot possibly be treated as a mere technical defect of a non-substantial character. Cases will arise where defects would be treated as trivial and unimportant in which a strict compliance with rigidity may not be insisted upon, but the omissions made in respect of the names of the candidates or the proposer or the seconder are not to be reduced to that level. Opinion expressed in *Srivastava's Indian Elections and Election cases* at page 129, also favours the view that if the name of the candidate or of the proposer or the seconder or of the constituency is wanting in the nomination paper, the defect could not be overlooked.

The omission of the name of the proposer against the column No. 9 of the nomination paper is undoubtedly a major defect in the preparation of the nomination paper. As has already been discussed above, the significance of this entry is emphasised by the Act itself, if we turn ourselves to the provisions of Section 33(5) of the Act and Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, which emphasize sufficiently for the appearance of the name in the body of the nomination paper, and evidently omission of entries of such importance must be presumed to imply a failure to comply with the provisions of section 33(1) for completing the nomination paper in the prescribed form, and such a defect is certainly fatal and cannot be condoned.

Except the case reported in the *Gazette of India Extraordinary* No. 31, dated the 3rd of February, 1953 page 261, to which we shall advert later, no other case is cited for consideration of the effect of the omission of the name of the proposer in the nomination paper. Principles enunciated in cases reported in the *Gazettes of India Extraordinary* No. 471, dated 20th November, 1952, No. 361 dated 23rd August, 1952, and No. 172 dated the 18th December, 1952, in which the defects of the omission of important entries, like constituency, electoral roll number and age are well discussed, are equally effective for consideration of the effects of the omissions of names.

The case reported in Government of India Extraordinary Gazette No. 471, dated the 20th November, 1952, deals with a case in which objections were taken that the nomination paper of the petitioner was not completed in the prescribed form. In as much as necessary requirements regarding columns Nos. 7 and 8 of the nomination paper were not furnished, and holding about the entry against the column No. 7 that it was meaningless as it has no bearing on the particulars required, and in respect of the entry noted against column No. 8 that it was as good as not given and that it was to be treated as a case of total omission to furnish the required particulars, the learned Tribunal refused to accept the nomination paper as a valid document. While discussing it is observed in it that "The provisions regarding the filling up of the particulars in the nomination form are clearly founded upon consideration of high policy, of a policy which the Tribunal does not at all doubt is extremely beneficial.....". "If really the insertion of particulars in the Nomination Form was optional, as contended, it is difficult to see why the Returning Officer should have been clothed with the power to reject the nomination for non-compliance of Section 33, which provides that the nomination paper shall be completed in the prescribed form".

The case reported in the Government of India Gazette Extraordinary No. 172, dated the 18th December, 1952, is another case dealing with incorrect description given in columns Nos. 7 and 8 of the Nomination Form. The case related to a

seat in the House of the People from the Murshidabad Parliamentary Constituency in the State of West Bengal. The candidate, instead of mentioning the said constituency and his serial number, as entered in the rolls of it, in columns Nos. 7 and 8 of the Nomination Form, gave the name of another constituency described as "Taltola (Constituency) Calcutta of the West Bengal Legislative Assembly" in column No. 7, and the serial number of the electoral roll relating to it, in column No. 8. The nomination paper, however, was not accepted as a duly completed one. Observing that though a presumption for the petitioner to be a parliamentary elector could arise from the entries given in the form, it was held that what was required of the petitioner was that he was to establish that his name had actually been entered in the electoral roll of some Parliamentary Constituency, as was the object of column No. 7. After referring to the provisions of Section 33 of the Representation of the People Act, 1951, and Rules of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, it was emphasised that every nomination paper was to be completed in the prescribed form and further that "such necessary particulars should be clearly stated in unequivocal, unambiguous and explicit terms" in the nomination form.

Government of India Gazette Extraordinary No. 361 dated 23rd August, 1952, at page 2002, discusses a case of the omission of the column prescribed for noting age of the candidate. After discussing the importance of the age item, it was held that in it the age of a candidate was an essential entry for the form and an omission of it was a defect of a substantial character. The nomination was rejected because of this omission.

The same principles, as are enunciated in the cases, noted above would apply equally with force regarding the preparation of the nomination paper in respect of the item of the name of the candidate, proposer and the seconder as well.

The case reported in the Government of India Gazette Extraordinary No. 31 dated 3rd February 1953, page 261, however, holds a different view that the omission of the name of the proposer in the nomination form was not to be treated as a vital defect in the completion of the prescribed form. With due respect we beg to differ from the view propounded in the said case. The finding given in it proceeds on an assumption that in case the other entries furnished material for inferring the name of the proposer the defect of omission could easily be ignored and should not be insisted upon. One of the grounds relied upon for this result at page 267 is that the Returning Officer could reject the nomination paper on any of the grounds mentioned in section (36)(2) of the Representation of the People Act, 1951 and that the omission of the name of the proposer, in column No. 9, is not counted on a ground for rejection in it. But Section 36(2) contains a definite provision in clause (d) empowering the Returning Officer to refuse any nomination on the ground that there has been a failure to comply with any of the provisions of section 33 or 34, and evidently the case of failure to put down the name of the proposer in the nomination paper in case such an entry is treated substantial, would amount to a non-completion of the nomination paper in the prescribed form, as contemplated by Section 36(2)(d), and thus such an omission can rightly be taken as a ground for the rejection of the nomination paper. At page 268 of the Gazette a stress is laid on the ground that it was the duty of the Returning Officer to have seen the nomination paper at the time it was received by him, and allow the petitioner an opportunity to put the name of the proposer in column No. 9, to cure the defect. But even if it be held that he (the Returning Officer) was in duty bound to bring the omission, to the notice of the candidate and he failed to do it, it would not absolve the candidate from his duty for submitting the nomination paper completed in due form, as has been discussed in an earlier part of this judgment. The attention of the learned members of the Tribunal does not seem to have been drawn to the principle that the compliance of the completion of the nomination paper in the prescribed form is also to be enforced and that it was quite distinct from the question as to the identity or eligibility of the proposer.

In the above cited authority, a reference is made to a case reported in the Government of India Gazette Extraordinary No. 15 dated the 15th November, 1952 (That Gopal Ramji Vs. Bhatiwara Maniklal Amolakchand and others). The election in that case, related to a seat in Nasik Local Authorities Constituency, one of the constituencies of the Legislative Council to the State of Bombay, which consisted of members of Municipalities, District Boards and Cantonment Boards in the Nasik District, and a separate electoral roll of this constituency had been duly prepared. While filling up the nomination paper the petitioner had filled up the item No. 7 by putting down the words, "The Nasik Local Authorities Constituency" for the Bombay Legislative Council and the figure "12" as against the item No. 8. The contention of the respondent No. 1 was to the effect that the nomination paper was bad inasmuch as in items No. 7 and 8 of it, the candidate had not mentioned the name of the Assembly Constituency and the serial number in the electoral roll of that constituency, which were the necessary requirements. The reply of the

petitioner as against this objection was that he had mentioned in the nomination paper the name of the Local Authorities Constituency, the Constituency for which he was standing for election, and his number in the electoral roll for that constituency, which were the requisite and correct entries, and that the paper should be deemed to be properly filled up. It was after an elaborate discussion on the point, that the learned Tribunal came to the conclusion that filling up of the columns No. 7 and 8 as appeared in the form was not open to objection, laying down that the mention of the Local Authorities Constituency name and the roll number of it in these columns was in order and a sufficient compliance, nothing further that the name of the Assembly Constituency could also be added in addition, and it was in the light of these view and the context, that an observation was made that non-mention of the Assembly Constituency was a defect of unsubstantial character. It in no way minimises, the importance of the entry of the name of the proposer. It was not in fact a case of the non-filling of the item reserved for the name of the constituency and the serial number of the electoral roll in it, and is not of any help to the petitioner, to support his contention that the omission of the name could be ignored.

The discussion in the case (Government of India Gazette Extraordinary dated 3rd February 1953) rests chiefly on the point that the identity of the proposer could be established even if the name did not appear from the paper itself. But in our view the question of the identity of the proposer is quite distinct from the question of his name appearing in the nomination paper, as discussed above. These two points are not to be mixed up together. We have given full consideration to the view expressed in this authority, but regret we are unable to agree with the proposition laid down in it.

The learned counsel for the petitioner referred to a case reported in the Reports of Indian Election Cases by Hammond Volume I at page 182, described as the Rohtak case, in support of his proposition that an omission of a name was not to result in the rejection of the nomination paper. It was, however, found in it as a fact, that the name of the seconder and his signature both did exit on the paper, and the objection as regards the omission of the name was incorrect, though the name was not just against the column noted for the name of the seconder. A passing observation was made in it that such a position was a defect but only a formal defect. This authority is not to be taken in support of the proposition that omission of the name was not to be considered as a defect of a serious type.

One other case reported in Hammond Volume II at page 185 (P. K. Dass Vs. C. Dass—Manipore South Constituency—Bengal Legislative Council) is also there for our consideration. It was in respect of an election held in the year 1924, and in which an omission of the entry meant for the electoral roll number was not created as fatal. The facts, as reported in the case, indicate that the disputed nomination paper was completed in the prescribed form except in one particular, i.e. omission of the electoral roll number of the candidate in the electoral roll of the constituency in which he was registered as an elector. From the discussion of this case it appears that the petitioner had not cared to know his electoral roll number earlier as in the Rules of 1920 it was not necessary to give this number, which were amended later. It was further laid down in that as soon as the necessity of the roll number came to his notice, he procured it and the Returning Officer was placed in possession of it before the scrutiny. In view of these particular circumstances of the case the petitioner was presumed to have complied with the provisions as to the completion of the nomination form. This case is not of much help to improve the petitioner's contention in the present case.

Another authority referred to on behalf of the petitioner in case No. 40 (Bhandara District case) as reported in H. S. Doabia Election Cases Volume No. 1. It is also not much helpful to the present case as it does not discuss the effects of leaving an entry blank in the nomination paper. The name in this case was mentioned as "Vinaka" instead of the full name "Vinayak Damodar Kotla". Immediately below "Vinayak" there appeared "Damodar" and the respondent had signed it as "V. D. Kotla" in the appropriate space for it. In these circumstances the description of the name by the word "Vinaka" was deemed sufficient. The name thus did appear from the form itself and there was no question of the omission of the name in this case.

From the petitioner's side reliance is also placed on the case reported in Indian Election Cases by Doabia Vol. 1, page 247, which considered the effects of the omission of the description of the sub-division in the column of the constituency in the nomination paper. On consideration of the particular circumstances of the case, it was held that the omission was not fatal. On the other hand the counsel for the respondent has referred us to another case reported in the Indian Election Cases by Sen and Podder page 326 which held the omission to be a material defect. The instructions about filling up the sub-division appear at the foot-note No. (6) of the

nomination form. The discussion given in the first case points out that the name of the sub-division does not throw any light on the important points of testing the identity and eligibility of a candidate, that it merely aids the Returning Officer to locate the name in the electoral roll. Further it lays down the principle that in cases, where in spite of the total omission to describe the sub-division or inadequate description, a name in the electoral roll can be easily located, it must be held in that case that there has been a substantial compliance with the Rule, but if on the other hand, the information is so meagre as to entail a laborious search in the roll, it must be held that there has not been substantial compliance. Another case was considered in Indian Election Cases by Sen and Podder Volume I at page 326, in which the roll of the constituency was sub-divided in three parts, but the sub-division, in which the petitioner, his proposer and seconder were enrolled, was not stated. After giving a discussion of several reported cases it was held that the failure of the petitioner to enter the name of the sub-division in the nomination paper was a failure to comply with the material provisions of the Rules, and the nomination paper was rejected.

Both these cases have taken into consideration several other reported cases too, which we need not discuss here, and in which the conflict centred round the fact of the omission of the sub-division. In some the omission is considered vital and in some excusable. All these cases are decided on their own merits, as facts demanded. These cases, which relate to the omission of the sub-division, are not to be taken as a safe guide for consideration of the effects of the total omission of such important items, as the name or roll number. The importance of the names is evident from a study of Section 33(5) and the notice, which is required to be affixed after presentation of the nomination paper under section 35, as against a mere instruction for noting the sub-division of the electoral roll, which finds a place in a foot note No. (6), given at the end of the nomination paper.

In our view the law, as is laid down in the Representation of the People Act, 1951 and the trend of cases, which discuss the effects of the omission of important items from the nomination paper, require that the nomination papers must be carefully filled in and the names column in it also ought to be completed before delivering the nomination paper to the Returning Officer and leaving the column of the name of the proposer blank would amount to a failure to comply with the provisions of section 33 of the Act. The petitioner Shri Narotam Singh is an experienced Advocate and has contested legislative elections on two previous occasions, as is stated by him, and with so much experience with him, if he showed a carelessness in the preparation of his nomination paper in the last general elections, he is to blame himself for it and should suffer the consequences of his negligence. He calls his mistake as mere oversight but this oversight is not of such a nature as can be excused in his case.

In view of the above discussion we are of the opinion that the order of the Returning Officer, refusing to accept the nomination paper, passed under section 36(2) (d) of the Representation of the People Act, 1951, is quite in order and we see no reason to interfere with it. The issue is, therefore decided against the petitioner.

Issue No. 2.—The second nomination paper of the petitioner bearing serial No. 262 was also rejected by the Returning Officer finding it defective in as much the thumb-impressions affixed by the proposer and the seconder against columns No. 12 and 16, purported to show the signature of the proposer and the seconder, were not attested by the Returning Officer, as was required by the provisions of Rules 2(2) of the Representation of the People (Conduct of Elections and Election petitions) Rules, 1951. A look at the said nomination paper would show that the fact the thumb-impressions do not carry any attestation of the Returning Officer at them.

According to Section 33 of the Act the nomination paper, that is to be presented to the Returning Officer, is to be subscribed by the candidate himself as assenting to the nomination and also by the proposer and the seconder, which means that those, who are literate and can write their names, are expected to put their signatures, while the others, who do not know how to write, are to subscribe by putting pen marks or thumb marks on it. But in the case of illiterate persons a special provision is made in Rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, that a person, who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such Officer as may be specified in this behalf by the Election Commission and such Officer on being satisfied as to his identity has attested the mark as being the mark of such person. So in case of illiterate persons subscribing as the proposer or the seconder the law makes it incumbent that the person putting his mark on the paper must appear before a Returning Officer or Presiding Officer or such other Officer as may be specified by the Election Commission and put his mark in the presence

of such Officer and such Officer was to attest the mark as being the mark of that person and it is only after such attestation is made that the paper was to be accepted as a paper duly signed by the person concerned. The attestation could in no case be overlooked if the person subscribing happens to be illiterate.

The learned counsel for the petitioner contends that in view of Rule 2(2) the attestation from the Officer is required only in a case where the person subscribing happens to subscribe it, by putting a mark on it and that the sub-rule (2) does not contemplate attestation in cases where the subscription is done by putting thumb-impressions. Rule 2(2) is intended to apply for all the persons, who are unable to write their names and sign the instruments by putting a mark on them, irrespective of the fact as to what sort of mark that may be. The mark can be put by simply drawing up a line by a pen, or by putting a cross-mark on it or by affixing a thumb mark. There is nothing in the section to exclude thumb marks from the category of marks intended by the said sub-clause. The word "mark" is used in the sub-clause as against the "signature", which one who knows how to write puts on a paper. It would be a very narrow interpretation if the word "mark" is to be confined to mean only the pen marks. In fact in India illiterate persons are mostly accustomed to subscribe by affixing thumb impressions on papers in case they are unable to put their signatures, and it cannot be considered that the legislature had overlooked such a class of persons while enacting this Rule. We are of the opinion that the word "mark" in sub-clause (2) of Rule (2) is intended to include thumb marks as well, and consequently in cases of thumb marks attestation from a Returning Officer or a Presiding Officer or such other Officer as may specified by the Election Commission is absolutely necessary. Such an attestation is wanting in the nomination paper in question. Consequently it could not be accepted as a valid nomination paper prepared according to the rules. Non attestation would mean the non-compliance of the requirement necessary for a valid nomination paper. In our opinion the action of the Returning Officer rejecting the nomination paper on the said ground was quite in order. The issue is, thereof decided against the petitioner.

Issue No. 3.—It is not necessary to discuss the issue whether the result of the election has been materially affected in consequence of the rejection of the nomination papers as it has already been held that the rejection orders are quire proper.

Issue No. 4.—This issue is not pressed at all by the counsel for the respondent No. 1 and we do not consider it worthwhile to discuss it.

Issue No. 5.—In view of the findings given on issues Nos. 1 and 2 we do not find any ground to declare the election of the respondent No. 1 to be void as is prayed for by the petitioner in his election petition.

The result is that the election petition fails and is dismissed. The parties shall bear their own costs.

(Sd.) SHIVA GOPAL MATHUR, *Member,*
Election Tribunal, Barnala.

I agree

(Sd.) DALIP SINGH JAIN, *Member,*
Election Tribunal, Barnala.

(Per S. Jagjit Singh, Chairman).

I had the advantage of reading the lengthy and most elaborate judgment written by Shri Sheo Gopal Mathur member of the Tribunal. The other member, Shri Dalip Singh Jain, has agreed with it. With all due deference to the learned members I have not been able to agree that the order of the Returning Officer rejecting the petitioner's nomination paper (serial No. 261) was a proper one.

2. Shri Narotam Singh petitioner had presented two nomination papers to the Returning Officer. One of those (Serial No. 261) was rejected due to one column, regarding name of the proposer, having been left blank. The second one met the same fate, though on different grounds. The proposer and the seconder were found not to have subscribed the nomination paper (Serial No. 262) in a legal manner.

3. The nomination paper, to which serial No. 262 was assigned, was rightly rejected. The proposer and the seconder being unable to write their names, each one of them affixed his "mark" in the form of thumb impression. But that was not done in accordance with the provisions of Rule 2(2) of the Representation of the People (Conduct of Elections & Election Petitions) Rules, 1951, to be referred to hereinafter simply as Rules. The thumb marks not having been put in the presence of the Returning Officer or the Presiding Officer or any officer specified for this purpose by the Election Commission and also not being attested, the nomination paper was not properly subscribed by the proposer and the seconder.

4. The rejection order of the other nomination paper (Serial No. 261), however, appears to be improper. The relevant facts are very simple and not disputed. Column No. 9 of the nomination paper was inadvertently left blank. The petitioner gave an explanation that the entry of column No. 8 was filled up in such a manner that it seemed to cover the next column as well and consequently he failed to notice the omission. The reason given is plausible and probably correct. From the respondent's side it was not urged the omission was intentional or deliberate.

5. Entries No. 8 to 12, in the above referred to nomination paper, were as follows:—

"(8) Serial number of the candidate in the electoral roll of the constituency in which his name is included. 115 village Chakkan. House No. 39—(original part).

(9) Name of the proposer.....

(10) Serial number of the proposer in the electoral roll of the constituency. 139 Village Datewas. House No. 129—(original part).....

(11) Number of the proposer in the list maintained under sub-section (1) of sub-section (2) of section 152 of the Representation of the People Act, 1951.....

(12) Signature of the proposer.....Amar Singh....."

The proposer signed his name against column No. 12 very clearly and legibly as "Amar Singh". That the electoral roll number of the proposer, as mentioned in item No. 10, does relate to Amar Singh is an admitted fact. If, therefore, it was permissible to ascertain the name of the proposer from his signature, instead of the prescribed column which was left blank, there was no defect of any substantial character.

6. For coming to a right decision it would be necessary to briefly advert to certain provisions of law and some of the decided cases.

7. The Representation of the People Act, 1951, (to be hereinafter referred to as the Act) has not prescribed the form of nomination paper. The form is given in Schedule 11 of the Rules. Rule 4 provides for completion of the nomination paper in the form prescribed in Schedule II, without laying emphasis on any particular entry or entries. Section 33(1) of the Act contains provisions for presentation of the nomination paper "complete in the prescribed form". Here also no distinction has been made between the different particulars to be given in it.

8. The next provision, worth noticing, is Section 36 of the Act. Clause (d) of sub-section (2) of it gives power to the Returning Officer of rejecting any nomination paper which does not comply with any of the provisions of Section 33 but lest such a grave consequence may follow even where the mistake in completing the form is of a trivial nature an important safeguard has been provided. Sub-Section (4) of Section 36 enacts:—

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

Technical defects, which are not of a substantial character, therefore, should not entail rejection of any nomination paper. Provisions of sections 33 and 36(2) are merely directory and substantial compliance with them is sufficient. If the intention of the Legislature had been otherwise no provision of the nature of Section 36(4) would have been made in the Act. If any authority be needed on this point reference may be made to a recent decision of an Election Tribunal (Pran Lal Thakar Lal Munshi vs. Indubhai Bhailalbhaj Amin and others—Para 11 at page 2005 of the Gazette of India Extraordinary dated the 23rd August 1952).

9. For determining whether or not any particular defect is of a substantial character or otherwise no one rule can be laid down. The decision depends upon the special facts of each case. The cases already decided can only be useful in indicating as to what should be the proper approach to such a question.

10. Some of the important cases regarding omissions in completing nomination forms have been noted below:—

(1) *Omission to fill up the column (No. 9) regarding the name of the proposer.*— In a recent case, which came up before the Election Tribunal, Rajasthan, Bikaner (Shri Bankat Lal Vs. Shri Madan Mohan and others the Extraordinary Gazette of India dated 3rd February 1953, page 261) almost exactly the same point was involved as in the present case. Column No. 9 regarding the proposer's name was left blank but the proposer had signed his name legibly and in full against column No. 12. The serial number of the proposer in the electoral roll of the constituency was also given. It was held that the omission amounted to a technical defect of a non-substantial character.

(ii) *Omission to fill up the column regarding the name of the seconder.*—In the Rohtak Case (Reports on Indian Election Petitions by Hammond Volume I, page 182) the column regarding the name of the seconder had been left blank, though the name appeared where the thumb-impression of the seconder was affixed. The defect was held to be a formal one.

(iii) *Omission to mention the sub-division in the nomination paper.*—The decisions have not been uniform and have depended upon the particular circumstances of each case. In *Mr. E. Few Vs. Mr. C. E. Gibbon* (I.D.I.E.C. 247) many cases of candidates failure to mention the sub-division of the electoral roll in the nomination papers were discussed and it was observed:—

"The decisions have all hinged on the findings of facts whether or not there has been a substantial compliance with the rule. The object of the information given in the form, as has been pointed out over and over again, is to enable the Returning Officer and others interested to test the identity and eligibility of a candidate. The name of the sub-division does not throw any light on these important points. It merely aids the Returning Officer in the mechanical operation of locating a name in the electoral roll. If in spite of the total omission to describe the sub-division or inadequate description, a name in a certain roll can be easily located, it must be held in that case that there has been a substantial compliance with the Rule and the nomination would be good. If on the other hand the information is so meagre as to entail a laborious search in the roll, it must be found that there has not been a substantial compliance and the nomination would be bad. We are unable to regard the Returning Officer as an authority not prepared to take any pains at all and bent upon rejecting the nomination of qualified candidate for immaterial omissions and errors in the filling up of the forms thus depriving entire electorate of their substantial right to elect persons of their choice."

That the law was rightly laid down in this case was even conceded by the counsel for the respondent No. 1

(iv) *Failure to mention the denomination of the candidate.*—In the case cited in (iii) above the nomination paper contained a column for filling in the denomination of the candidate. That was not filled up but in two other columns of the form the candidate wrote the word "Anglo-Indian". The Election Petitions Commission held the omission not to be of substantial character. It was remarked: "If in spite of the omission in the column meant for 'denomination' the required information is forthcoming in the form, he (the candidate) must be held to have substantially complied with the Rules for filling up of the form".

(v) *Omission to write the candidate's name in full.*—In *R. B. V. Jakardar Vs. V. D. Kotle* and others (Doabia Election Cases Vol. I Case No. 40) the name of the candidate was written as "Vinaka" instead of "Vinayak Damodar Kotle". In the space, immediately below, intended for candidate's father's name, the entry was "Damodar". The Commissioners did not regard the defect to be a material one by holding that though it is desirable that the name in the nomination paper should appear to be the same as in the electoral roll but there was no rule enjoining that the name entered in the nomination paper should be the name in full. Observations were also made to the effect that the details to be filled in the nomination paper are intended to ensure either the identity or the eligibility of the candidate and the proposer and the seconder.

(vi) *Omission to fill up the candidate's electoral roll number.*—In *P. K. Dass Gupta Vs. C. Dass* (Reports on Indian Election Petitions by Hammond Volume II page 185) the defect was not considered to be vital as the name of the candidate could be traced with no more inquiry that would be necessary. The circumstances, that the candidate was in a position to furnish the electoral roll number at the time of scrutiny or that the previous rules were different, are not sufficient to detract from the weight of this authority. The fact remained that the rules at the time of the presentation of the nomination paper required the electoral roll number to be stated in it and further that this particular was not mentioned. More recently an Election Tribunal of Bombay, in the particular circumstances of the case before them, considered the non-mention of the number of the candidate in the electoral roll (as well as the name of the assembly constituency) to be "at best a technical defect, which is not of a substantial character" (*Thate Gopal Ramji Vs. Bhatiwara Maniklal Amotakal* and others—The Extraordinary Gazette of India No. 464 dated 15th November, 1952, at page 3420).

11. Regarding the case of Shri Bankat Lal Vs. Shri Madan Mohan Lal and others, referred to in para 10 above, it was contended from the side of the respondent No. 1 that the finding of the Tribunal was mainly based on two erroneous grounds; firstly that the Returning Officer having failed to get the omission rectified under provisions of Section 33(5) the candidate was not to suffer, and secondly that the Returning Officer could not reject the nomination paper on account of the omission to fill up the column for the proposer's name as such an omission was not mentioned in Section 36(2) of the Act.

If I may say so the judgment of the learned Election Tribunal, Rajasthan, does not proceed on the above mentioned grounds. The counsel for the petitioner in that case had, of course, contended that it was the duty of the Returning Officer to have got the name filled in on receiving the nomination paper. In this connection the provisions of Section 33(5) were discussed but it was nowhere held that if a Returning Officer falls in his duty the candidate is to be absolved from the responsibility of leaving a column blank in the nomination paper. The second contention is equally devoid of force. The learned members of the Tribunal did not take the view that the Returning Officer could not reject the nomination paper as omission to fill the column for the proposer's name is not mentioned in Section 33(2) of the Act. The relevant portion of the judgment on this point reads as follows:—

"The Returning Officer could reject the nomination paper only on any of the grounds mentioned in Section 36(2) of the Representation of the People Act, 1951, which do not make any mention of the omission to put in the name of the proposer in column 9 to be a ground for rejection of the nomination paper. The idea underlying the provisions of Sections 33 and 36 of this Act, appears to be that the Returning Officer should be satisfied as to the identity of the proposer and the seconder and in this case since the electoral roll number and the signature of the proposer were legibly given in the nomination paper, the Returning Officer should have treated the omission of his name as a defect of technical character".

Evidently what was meant was that such an omission had not specifically been made a ground of rejection of a nomination paper under Section 33(2) and as the other particulars given in the form were sufficient for satisfying the Returning Officer regarding the identity of the proposer the defect should have been treated as that of a technical character. So far as I have been able to understand the main reasoning adopted by the Bikaner Tribunal (in Shri Bankat Lal Vs. Shri Madan Mohan and others) was that the law did not require meticulous accuracy in filling up the nomination paper and in view of the electoral roll number of the proposer having been given and the proposer having signed his name in full, the defect in leaving column No. 9 blank was a technical one, which was not of a substantial character. This authority is thus on all forms with the facts of the present case and is of great weight.

13. The Rohtak case was tried to be distinguished on the plea that the remark made regarding the omission was a casual one and the main point for consideration was something else. The point of omission to fill up the column for the proposer's name did arise in that case and even though no reasons were given for the view taken still the case is helpful to show in what light such a defect was taken.

14. Pran Lal Thakor Lal Munshi Vs. Indubhai Bhailalbhai Amin and others (The Gazette of India Extraordinary No. 361 dated 23rd August 1952 pages 2003 to 2008), P. N. Balasubramanian Vs. C. R. Narasimhan and others (The Extraordinary Gazette of India No. 471 dated 20th November 1952 pages 2458 to 2465) and Badrudraja Syed Vs. Mohammad Khuda Buksh and others (The Extraordinary Gazette of India No. 172 dated 18th December 1952, pages 991 to 998) were also cited from the side of the contesting respondent. In the first of these cases the petitioner had omitted to fill in his age in item No. 4 of the nomination paper and a question arose whether that was a defect of a substantial character or not. The learned members of the Tribunal held that under section 84 of the Constitution Act one of the requisite qualification of a person to be chosen to fill a seat in the House of the People is that he must not be less than 25 years of age and further according to Rule 4 of the Representation of the People (Conduct of Elections & Election Petitions) Rules, 1951, the Returning Officer has to give a certificate to the eligibility, which he can only do when he finds that the candidate is not less than 25 years of age. On these grounds it was held that the age of a candidate is of essence as opposed to form and in other words is substantial or essential. The other cases are of omissions to completely or properly fill in the Parliamentary Constituency and certain other particulars, namely columns No. 7 and 8 of the nomination paper. In the peculiar circumstances of those cases the defects were held to be

of substantial character. None of these cases can be of any help in determining the nature of the omission which took place in the present case where the omitted particular can be ascertained, without any difficulty, from the signature of the proposer appearing in another column of the same form.

15. A careful study of the above mentioned cases shows that the details to be filled up in the nomination papers are intended to ensure either the identity or the eligibility of the candidate and the proposer and the seconder. Further a meticulous accuracy in filling up the entries in the nomination form is not to be insisted upon. A substantial compliance is all that is required. Where in spite of any omission the necessary particulars can be located from the other entries in the form itself, the defect is more or less formal and not of a substantial character.

16. Judged in this light the omission to fill the name of the proposer in column No. 9 was not a defect of a substantial character. The name of the proposer was evident from the signature appearing against column No. 12. The electoral roll number of the proposer, with some superfluous details such as his village and house number, had also been given. That no difficulty was felt in ascertaining the name of the proposer from the form is evident from the fact that in the notice of nominations (*vide* Section 35 of the Act) name of Amar Singh duly appeared as proposer against the nomination paper, serial No. 261. The identity or eligibility of the proposer was also not disputed before the Returning Officer or made a ground of rejection of the nomination paper. Under these circumstances the omission in leaving column No. 9 blank was no more than a formal defect. The defect being merely of procedure was undoubtedly technical in nature. The omission being technical and also not of a substantial character the Returning Officer was not justified in refusing the nomination [*vide* Sub-section (4) of Section 36 of the Act].

17. My learned colleagues have taken the view that the law has attached particular importance to filling the column regarding the name of the proposer in the nomination form and where that is not done an important defect occurs as the Returning Officer is not able to compare the proposer's name with the one entered in the electoral roll. The words "as entered in the nomination paper", in Sub-Section (5) of Section 33, have also been construed by them to imply "in the form and its proper column". An observation was as well made that where the column regarding the name of the proposer is left blank the law does not leave an option to the Returning Officer to infer the name from the other entries appearing in the nomination paper. The conclusion arrived at was: "The total omission of a material entry cannot possibly be treated as a mere technical defect of a non-substantial character".

18. With all respects I would submit that the reasoning of the learned members of the Tribunal is not very clear to me. There is no provision of law attaching particular importance to the column for the proposer's name in the nomination form. The object of prescribing different entries for the nomination form is that the identity or eligibility of the candidate and the proposer and the seconder should be readily ascertainable. The filling up of particular columns in the form is to ensure that object and is not an end by itself.

19. The provisions of Sub-Section (5) of Section 33 of the Act appear to have resulted in some confusion. That Sub-Section requires the Returning Officer, on presentation of a nomination paper, to satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder, as entered in the nomination paper, are the same as those entered in the electoral rolls. The two provisos further allow the Returning Officer to permit any clerical error in regard to the names or electoral roll numbers of the candidate and the proposer and the seconder to be corrected in the nomination paper at the time of its presentation or to overlook any clerical or printing error in these entries.

20. The provisos of Sub-Section (5) of Section 33 appear to have been enacted for the benefit of candidates so that clerical errors in names and electoral roll numbers, as entered in the form, may be allowed to be corrected at the time of presenting nomination papers or may be overlooked. To draw any inference from this that the law attached any special importance to the filling up of any particular column would hardly be justified. The duty imposed on the Returning Officer, of comparing the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper with those entered in the electoral roll, has no direct connection with determination of the question whether any defect in filling up the nomination paper is of a substantial character or not. Furthermore the words "as entered in the nomination paper" cannot, by any rule of interpretation, be construed to mean "in the form and its proper column". What is required is that names and electoral roll numbers as entered in the nomination

paper (i.e., the nomination paper as a whole and not any particular columns of it) should be compared with the entries in the electoral roll. The omission to fill up a particular column will not, therefore, interfere with this duty of the Returning Officer if the required particulars can be readily ascertained from the other entries of the nomination form itself. The question of such an omission assuming the form of an "important defect" does not arise.

21. In the present case there is no material on the record to show that the Returning Officer noticed the omission at the time of the presentation of the nomination paper. It would, therefore, be a useless discussion as to whether he would have allowed the omission to be rectified or not by regarding it as a clerical error or otherwise. Thus irrespective of the nature of the duty of the Returning Officer, under section 33(5) of the Act, it has to be independently determined whether the defect which remained in completion of the nomination paper was of a technical and substantial character or not.

22. The argument that a Returning Officer is not competent to infer the name of the proposer from the signature, even where the signature is made in full and is easily legible, is not appealing. Signature of the proposer being part of the nomination paper can certainly be looked at for finding out as to what is the name of the proposer. If other entries in the nomination paper can be made use of for ascertaining particulars regarding omitted items like full name of the candidate, denomination (where required) and the name of the seconder etc., then why not the same rule should apply in the case of the proposer's name?

23. The conclusion arrived at by the learned members of the Tribunal depends upon the assumption that the entry to be made against column No. 9 is a material one. If that is taken for granted nothing remains to be determined.

24. The commentary appearing in a book on Indian Election Law (Indian Elections & Election Petitions by Shri Gursharan Lal Srivastava, 1952 Edition, at page 129) has also been relied upon. That portion reads as follows:—

"Thus if the name of the candidate or of the proposer or seconder or of the constituency is wanting in the nomination paper, the defect cannot be overlooked".

On the whole the same learned commentator has favoured the view, by referring to certain authorities, that the object underlying the prescribing of a particular form for the nomination paper and requiring specified particulars in it, is to ensure that the identity and eligibility of the candidate, the proposer and the seconder are known without difficulty and when this object can be achieved without strict adherence to the form by the particulars given in it the nomination paper should not be invalidated (*vide* commentary at pages 127 and 128). To take only a sentence at random from the commentary, disjointed from the context in which it appears, is likely to lead to wrong results. Any way that portion is based on the Bctual District Case (Doabia's Election Cases Vol. I, Case No. 38), which is no authority for the proposition that has been tried to be derived from it.

25. The points involved in the Bctual District Case, referred to above, were whether the nomination papers of two candidates had been improperly rejected and that of the third one improperly accepted by the Returning Officer. The order of rejection was passed on the ground that fathers' names of the proposers and the seconds were necessary for their identification but had not been mentioned. It was held that these particulars were unnecessary as the omission to provide columns in the form of nomination paper for noting father's name of the proposer and the seconder could not be accidental. In this connection an observation was made (which has been referred to by the learned members of the Tribunal for a somewhat different purpose) that "it is one thing to say that the form has not been duly filled up, and quite another that the proposer or the seconder is not identical with the person whose electoral number is stated in the form". On the second point the finding given was that the nomination of the third candidate had been improperly accepted as his name had not been given in full in the form. This second finding evidently cannot help in concluding that even when full name is given in another column of the form itself, by way of signature or otherwise, still the defect would be a material one.

26. It has been remarked by an eminent Judge that all rules are made for their observance, but in case of their breach the object of the rules is to be found out, and if the object has been attained in spite of the breach the transgression will have to be condoned (I.L.R. 47 Calcutta 526). The Representation of the People Act, 1951, instead of leaving such a principle of interpretation at the mercy of Returning Officers or Election Tribunals has given statutory recognition to it. In Sub-Section (4) of section 36.

27. To sum up it may be stated that under the law, as it stands at present, the nomination paper of any candidate should not be rejected when the defect in filling up the particulars prescribed in the form of nomination is of a technical and unsubstantial character. The omission of the petitioner in leaving the column for the proposer's name blank did not confuse or mislead any one. The identity and eligibility of the proposer were never challenged. His electoral roll number was duly stated in the nomination form and the name was also evident from the signature made against column No. 12. In spite of all this to hold the defect to be of a substantial character would, in my opinion, amount to ignoring the clear provisions of Section 36(4) of the Act on some untenable and hypothetical surmises and deprive the electorate of its right to vote for a candidate who was qualified to their vote.

28. One of the nomination papers of the petitioner having been improperly rejected the result of the election was materially affected. For rebutting the presumption that arises from the improper refusal of nomination the strongest and most conclusive proof is required. The evidence produced in this case was merely to the effect that the petitioner had failed to get any party ticket. This much, however, had to be admitted by the witnesses that some independent candidates also succeeded during the last general elections. The petitioner's own statement shows that in the past he twice successfully contested election. No other inference is, therefore, possible. Shri Jagan Nath, the learned counsel for the respondent No. 1, frankly admitted that in case the rejection of any nomination paper of the petitioner is held to be improper the election from Bareta-Badladha Constituency will have to be declared to be wholly void [*vide* Section 100(1)(c) of the Act].

29. The objection regarding the petitioner's not being qualified to be enrolled as an elector in Bareta-Badladha Constituency of the Patiala & East Punjab States Union (*vide* issue No. 4) was not pressed.

30. Consequently the petition of Shri Narotam Singh should be accepted and the election from the Bareta-Badladha Constituency, i.e., of Shri Des Raj respondent No. 1 should be declared to be wholly void. In view of the fact that the respondents are not responsible for the wrong order of the Returning Officer the parties should be left to bear their own costs.

(Sd.) JAGJIT SINGH, *Chairman*,
Election Tribunal, Barnala

ORDER

In accordance with the majority opinion, as required by Section 104 of the Representation of the People Act, 1951, we dismiss the petition of Shri Narotam Singh but leave the parties to bear their own costs.

Pronounced in the open Court this 26th day of February, 1953.

(Sd.) JAGJIT SINGH, *Chairman*.
(Sd.) SHIVA GOPAL MATHUR, *Member*.
(Sd.) DALIP SINGH JAIN, *Member*.

[No. 19/186/52-Elec.III.]
P. S. SUBRAMANIAN,
Officer on Special Duty.

